



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :10.07.2018

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CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P (MD) No.14789 of 2018

and

W.M.P. (MD) .No.13343 of 2018

Karmegam

: Petitioner

Vs.

1. The Chief Secretary to the Government
Secretariat, Fort St. George,
Chennai-600 009.

2. The District Collector,
Madurai District, Madurai.

3. The Divisional Engineer,
State Highways Department
Alagarkovil Road, Madurai-2.

4. The Assistant Divisional Engineer,
(Construction and Maintenance)
State Highways Department
Madurai-2.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondents 1 & 2 to take appropriate action based on the petitioner's representation dated 21.03.2018 within a stipulated time fixed by this Court.

For Petitioner : Mr.M.Ramu

For Respondents : Ms.V.P.M.Vaishnavi,
Government Advocate

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus to direct the respondents 1 & 2 to take appropriate action, based on the petitioner's representation dated 21.03.2018.



2. The petitioner made a representation to the respondent for reconveyance of his land. But, according to the petitioner, the land falling under Sy.Nos.226/4A, 4B and 4C belongs to the petitioner's family and they established a temple in the property. Later, the Government has acquired the part of the property and left an extent of 27 cents in Sy.No.226/4C and 19 cents in Sy.No.226/4A. Insofar as these extents are concerned, the petitioner's family has been in continuous possession for the past 110 years. According to him, till date, 19 cents of land in Sy.No.226/4A is fenced and a house situated therein is a place of worship. On 09.03.2018, when the petitioner went to pay respects to samathi of their grandfather, the National Highways Authority, abusing their powers, have trespassed into the land and caused disturbance. Since the land in Sy.No.226/4A, measuring an extent of 19 cents is not used by the Government and it is in continuous possession of the petitioner, that should be deleted from the acquisition proceedings and re-conveyed to the petitioner.

3. After some arguments, attention of this Court was drawn to the judgment of the Honourable Division Bench of this Court in W.P.(MD).No.1436 of 2014, wherein, this Court has held as follows:

"5. As of now, there is no material to show that there is a Temple. There is also no document to show that the petitioner has got any right or title over the land in question. The fact that he is involved in eight criminal cases would also speak volumes about the hollowness of the claim that all are made by the petitioner. The issue has been complicated by the 2nd respondent by appointing a Fit Person for a non existing Temple. Therefore, the impugned order is liable to be set aside. At the same time, we need to clarify that if there is any encroachment on the Highways land, it is for the authorities to take appropriate steps to remove the said encroachment without any further delay.

6. In the result, the writ petition is allowed and the impugned order is set aside, however, we make it very clear that we have not accepted the case of the petitioner that there is a Temple and that the same is under his administration. We further clarify that if the petitioner has made any encroachment on the Highways land, it is for the authorities to remove the said encroachment without any further loss of time. No costs. Consequently connected Miscellaneous Petition is closed."

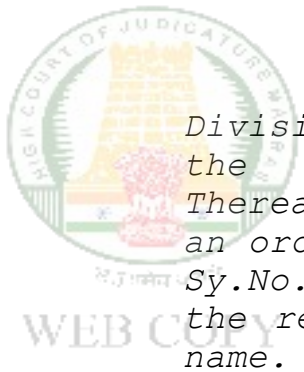
Thereafter, the petitioner again approached this Court in W.P. (MD).No.16202 of 2016 with regard to the same property, wherein, <https://hcservices.ecourts.gov.in/hcservices/> directed the petitioner to approach the Civil Court, considering the rival claims over a WILL. The relevant portion of the said order reads as follows:



"5. In our considered view, whether the WILL in question is a forged one or a genuine WILL and whether it has come into force and also whether under the WILL anybody can claim, title or possession in view of the above acquisition proceedings, are all matters to be gone into only by the competent civil Court on evidence. Thus, we cannot resolve the issues in a writ petition under Article 226 of the Constitution of India, without proof of rival claims or evidence and any such course will be possible only before the civil Court. Therefore, we are not inclined to grant the relief sought for by the petitioner. Accordingly, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions in WMP Nos.12372/2016 and 11853/2016 are closed."

4. Thereafter, the fourth respondent, Assistant Divisional Engineer, State Highways Department has issued a notice, dated 30.11.2016, to the petitioner to remove the encroachment and vacate the place. Again on 10.01.2017, it appears that the fourth respondent issued a notice, calling upon the petitioner to remove the structures put up by them encroaching Varanasi - Kanyakumari Highway at 440/020 KM (SHU 100 right side) comprising Sy.No.226/1B, 1C of Madakkulam Village, within a period of 7 days. Aggrieved against the notices issued by the fourth respondent, the petitioner has filed W.P.(MD).Nos.753 and 1424 of 2017 before this Court. While deciding the issue, this Court has held as follows:

"3. The case of the petitioner is that an extent of 60 cents in Sy.No.226/4 belonged to his great grandmother, Rakkayi Ammal under a sale deed dated 13.09.1938. It was gifted to her son Rakkappa Konar under a settlement deed dated 22.03.1957. The said Rakkappa Konar executed a Will dated 30.10.1992 in his favour (petitioner) and his brother Nallamani. Sy.No.226 was sub-divided into Sy.No.226/4A (extent of 19 cents), 226/4B, (extent of 14 cents) and 226/4C (extent of 27 cents). An extent of 19 cents and 14 cents in Sy.Nos.226/4A and 4B was acquired by the Government for the construction of by-pass road. Sy.No.226/4A and 4B have been registered in the Village account as 'village poromboke'. But Sy.No.226/4C has been registered as 'road'. According to the petitioner, Sy.No.226/4C should have been registered in the name of Rakkappa Konar. He made a representation to the Revenue Divisional Officer, Madurai to change the classification of land in Sy.No.226/4C. The Revenue Divisional Officer recommended to the District Revenue Officer to issue the name of the petitioner. The Special Commissioner and Commissioner of Land Administration by his letter dated 18.02.2004 directed the Revenue



Divisional Officer, Madurai to pass necessary orders on the appeal petition filed by the petitioner. Thereafter, the Revenue Divisional Officer, Madurai, by an order in Na.Ka.No.949/04/E dated 18.04.2005 held that Sy.No.226/4C belonged to the Government. He rejected the request of the petitioner to transfer patta in his name.

4. Thereafter, the petitioner was called upon by way notice, dated 23.07.2005 to remove the encroachments made by him on the highway. As against which, the petitioner has filed a writ petition in W.P.(MD). No.4487 of 2004 for a direction to the Superintending Engineer, Divisional Engineer and Assistant Engineer not to encroach upon the property of the petitioner in Sy.No.226/4C of Madakkulam Village, Madurai South Taluk, Madurai District. The learned Single Judge, by his order dated 26.06.2007 dismissed the writ petition, as the respondents therein have filed a counter affidavit disputing the ownership of the petitioner. The learned Single Judge has observed that it is for the petitioner to establish his legal right over the land before an appropriate Civil Court and writ remedy is not open to the petitioner. The writ appeal preferred by the petitioner in W.A.(MD).No.463 of 2007 was dismissed by this Court, on 15.07.2008. Thereafter, the petitioner has filed a suit in O.S.No.511 of 2016. The impugned notices were issued on 05.01.2017 and 10.01.2017. The present writ petitions have been filed on 11.01.2017 and 24.01.2017 respectively."

and finally dismissed the writ petition on 26.04.2017 with the following observations:

"8. It is seen from the records that the petitioner encroached on the highway and put up structures encroaching the highway. The learned Special Government Pleader on the basis of the report, dated 28.01.2017, of the Assistant Divisional Engineer, Highways, (Construction and Maintenance), Madurai, reported that in pursuance of the orders of this Court, the above structures put up by the petitioner have been removed. The submissions of the learned Special Government Pleader are placed on record. As the structures encroaching the highway and covered by the impugned notices have already been removed, we are of the considered view that nothing survives for consideration in these writ petitions. Therefore, the writ petitions are liable to be dismissed."

<https://hcservices.ecourts.gov.in/hcservices/>

5. From the above judgments of this Court, it is very clear that he has approached this Court with an affidavit



containing false and misleading statements. That the petitioner was directed to approach the Civil Court for establishing his legal rights over the lands and writ remedy was not open to him. Despite the same, he has approached this Court for reconveyance of his land on misleading facts.

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6. Article 226 of the Constitution of India is a sacred tank. No body can pollute it by making false and misleading statements. Such futile attempt is considered as abuse of process of law. In fact, I am inclined to impose a heavy cost for re-litigating the issue, without establishing any legal right. However, I refrain myself from doing so, considering the future of the young counsel appearing before this Court. The writ petition merits no consideration and it is liable to be dismissed.

7. Accordingly, the writ petition is dismissed. If at all the petitioner wants to get any remedy, he has to approach the Civil Court and establish his title first and thereafter approach the respondent for appropriate remedy. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Chief Secretary to the Government
Secretariat, Fort St. George,
Chennai-600 009.

2. The District Collector,
Madurai District, Madurai.

3. The Divisional Engineer,
State Highways Department
Alagarkovil Road, Madurai-2.

4. The Assistant Divisional Engineer,
(Construction and Maintenance)
State Highways Department
Madurai-2.

+ 1 cc TO Mr.M.Ramu , Advocate in SR No. 72062

+ 1 cc TO The Special Government Pleader in SR No. 72548

vs

AE/RP/SAR4/27.07.2018/5P/7C

<https://hcservices.ecourts.gov.in/hcservices/>

Order made in
W.P (MD) No.14789 of 2018
10.07.2018