



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MRS. JUSTICE R.THARANI

W.P. (MD) No.23583 of 2018

and W.M.P. (MD).Nos.21381 and 21382 of 2018

J.Then Rajan

: Petitioner

Vs.

Sivakasi Municipality,
Represented by its Commissioner,
Sivakasi - 626 123
Virudhunagar District.

: Respondent

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating to the impugned proceeding of the respondent municipality dated 30.10.2018 in Na.Ka.No.4592/2018F1 and quash the same.

For Petitioner : Mr.N.Dilip Kumar for M/s.P.Prabu

For Respondent : Mr.J.Senthil Kumariah

Standing Counsel

O R D E R

[Order of the Court was made by R.SUBBIAH, J]

This Writ Petition has been filed for issuance of writ of Certiorari to quash the impugned proceeding of the respondent municipality dated 30.10.2018 in Na.Ka.No.4592/2018F1.

2.Heard Mr.N.Dilip Kumar, learned counsel appearing for the petitioner and Mr.J.Senthil Kumariah, learned Standing Counsel appearing for the respondent.

3.The case of the petitioner is that a larger extent of 12.22 acres of land then located in Revenue Survey Nos.109, 120, 123(1) of the then revenue village of Sivakasi were Hindu undivided family properties comprising of the grandfather of the petitioner along with his six sons. They entered into a registered deed of partition dated 08.03.1948. The petitioner's father one AMRM Jebamani Nadar and one AMRM Thilagamani Nadar are also parties to the said document.

4.The lands allotted to the share of the father of the petitioner and the neighbouring lands allotted to his brother AMRM Thilagamani Nadar were all subjected to Town Survey Settlement Proceedings in the 1977. Thereafter, there was a supplementary town survey settlement. Accordingly, some lands were registered in the name of the father of the petitioner and some lands were registered in the joint name of his father and the brother of his father. All the buildings have been assigned with separate and various door numbers.



5. After demise of the father of the petitioner, a partition deed dated 28.08.2009 was executed in document number 6353/2009. Pursuant to the same, the petitioner had executed a deed of settlement in favour of his wife and two sons. Upon receipt of the application of the petitioner dated 15.07.2011, property tax assessment was transferred by order dated 20.08.2011. At this juncture, some third party individuals had given representation alleging that the petitioner has encroached into a layout. Without issuing any notice or without affording any opportunity of hearing, the respondent Municipality has issued the impugned proceedings. Thereafter, the petitioner sent a representation to the respondent on 23.11.2018. Since the imminent threat of forcible dispossession continues to be wielded by the respondent, the petitioner is before this Court.

6. Though the learned counsel for the petitioner has raised very many grounds to quash the impugned proceedings, he has mainly argued that the impugned order has been passed without issuing show cause notice calling for the explanation from the petitioner. In fact, the petitioner derived title from their ancestors. If show cause notice is issued, he will be in a position to put forth his case by producing all the necessary documents in respect of his claim.

7. We find force in the said submission. Therefore, we are inclined to set aside the impugned order. Accordingly, the impugned order is set aside. The respondent is directed to issue a show cause notice calling for explanation from the petitioner within a period of two weeks from the date of receipt of a copy of this order. On receipt of such explanation, the respondent is directed to conduct an enquiry after affording an opportunity of personal hearing to the petitioner as well the other necessary parties concerned and pass orders on merits. If the respondent finds encroachment, he is at liberty to remove the same in accordance with law. The entire exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order.

8. In the result, this Writ Petition is allowed. No costs. Consequently, connected W.M.P.(MD) Nos.21381 and 21382 of 2018 are closed.

Sd/
Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar(CS-I)

+1cc to Mr.J.SENTHIL KUMARAIHAH, Advocate, SR.No.97986
+1cc to Mr.N.PRABU, Advocate, SR.No. 98478

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