



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A(MD)NO.746 OF 2011
and
M.P(MD)No.2 of 2011

Rajamani :Appellant/Third Party
.vs.

1.V.Kumar :Respondent/petitioner

2.The District Collector,
Ramanathapuram District.

3.The Tahsildar,
Thiruvadanai Taluk,
Ramanathapuram District.

4.The Assistant Executive Engineer,
Tsunami Project Implementation Office,
Ramanathapuram.

5.Ravi,
President,
Kodipanku Panchayat,
Machoor Group,
Thondi Post,
Thiruvadanai Taluk,
Ramanathapuram District. : Respondents 2 to 5/
Respondents 1 to 4

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.P(MD)No.13948 of 2010, dated 25.01.2011.

Prayer in WP(MD).No. 13948/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARI, MANDAMUS, calling for the records relating to the impugned order of the 2nd Respondent in ref.N.K.A6/17949/2010 dated 22-10-2010 and quash the same and consequently direct the



Respondents 1 to 3 herein to complete the construction of Petitioner house under Tsunami Implementation Scheme in the Patta land of the Petitioner as per the Notice of the 3rd Respondent dated 28-07-2010 and 16-08-2010.

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For Appellant	:M/s.P.Pethu Rajesh
For Respondent-1	:Mrs.M.Rajeshwari for M/s.D.Panneerselvam
For Respondents 2 to 4	:Mr.K.Mu.Muthu, Addl.Govt.Pleader
For Respondent-5	:No appearance

JUDGMENT

[Judgment of the Court was made by K.RAVICHANDRABAABU,J.]

This Writ Appeal is filed by a Third Party to the Writ Petition, after obtaining leave from this Court.

2.The Writ Petition was filed by the first respondent herein challenging the order of the Tahsildar, Thiruvadanai Taluk, Ramanathapuram District, dated 22.10.2010 informing the Writ Petitioner that permission is not granted to construct a house under Tsunami Scheme in respect of the property situated in S.No.91/28. The Writ Petitioner also sought for a direction to the respondents 1 to 3 therein to complete the construction of the Petitioner's house under the Tsunami Implementation Scheme.

3.The case of the Writ Petitioner before the Writ Court, in short, is as follows:

The property bearing S.No.91/28 situated at Narenthal Village, in Kodipanku Panchayat belonged to his father-in-law by name Thangavel, who got the same by way of assignment and assignment patta was also given in the name of the said Thangavel in Patta No.142. The said property was subsequently transferred to the Writ Petitioner at the time of his marriage. He was residing in the said property after constructing a hut. It was damaged during Tsunami in the year 2004.The official respondents had taken steps to rehabilitate the victims of Tsunami and accordingly, the Writ Petitioner was asked to hand over possession of the property for putting up a residential building in the said property. Accordingly, the Writ Petitioner handed over the same with a hope that it would be returned after constructing a building therein. However, without returning the property with construction, the impugned order came to be passed.

4.The Writ Court after considering the facts and circumstances and giving a finding that no valid reasons are found in the impugned order and that the cancellation of the assignment was also made without notice to the Writ Petitioner, disposed the Writ Petition by



setting aside the impugned order by directing the third respondent to construct a residential house and hand over the possession of the same to the Writ Petitioner as expeditiously as possible.

5. The present Writ Appeal is filed by a third party to the Writ Petition by contending that the subject-matter property at S.No.91/28 was previously bearing S.No.6/1 and assignment patta granted in favour of the said Thangavel in respect of said S.No.6/1 was cancelled and the said cancellation even though was questioned by the said Thangavel before all the forums, the same was sustained. It is the further case of the appellant that even though subsequently the assignment was once again given in favour of the said Thangavel, after re-survey in respect of S.No.91/28, the fact remains that both properties namely S.No.91/28 and S.No.6/1 are one and the same. Therefore, it is contended that subsequent assignment made in favour of the said Thangavel is also not valid. Thus, it is stated by the appellant that challenging the said assignment, an appeal is filed and pending before the Revenue Divisional Officer, Ramanathapuram in Na.Ka.No.S9763/15 by impleading the father-in-law of the Petitioner as one of the party-respondents. Therefore it is sought to be contended by the appellant that when the proceedings challenging the assignment granted in favour of the father-in-law of the Petitioner is still pending before the Revenue Divisional Officer, as stated supra, the present Writ Petition filed by suppressing all those facts, cannot result in passing the order in the Writ Petition, that too, with a positive direction to construct a residential house and hand over the same to the Writ Petitioner.

6. We heard both sides.

7. It seems that there is a dispute between the parties in respect of assignment of land at S.No.91/28 in favour of the father-in-law of the Writ Petitioner Thangavel. It is also seen that challenging such assignment, an appeal is filed before the Revenue Divisional Officer, Ramanathapuram and the same is stated to be still pending. However, as it is seen that the Writ Petitioner, from whom the property was taken for putting up a residential house under Tsunami Rehabilitation Scheme, has approached this Court and obtained an order in the Writ Petition by claiming that permission to construct a house was cancelled without notice to him. Needless to say that even though such order was made without notice to the Writ Petitioner, the root of the matter is with regard to the very assignment itself, challenge of the same is said to be pending before the Revenue Divisional Officer, Ramanathapuram. Therefore, any order that is going to be passed by the Revenue Divisional Officer, Ramanathapuram in the above said proceedings will certainly have a bearing on the construction to be put up in the subject-matter property. Therefore without expressing any view on the claim made by the respective parties, this Writ Appeal is disposed of, only with a direction that any construction put up in pursuance to the order passed by the writ Court is subject to the out-come of the order to be passed by the Revenue Divisional Officer



in the above said proceedings. It is open to the respective parties to raise all the contentions before the Revenue Divisional Officer, Ramanathapuram District, as this Court is not expressing any view on the claim made by the respective parties. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-II)

To

- 1.The District Collector,
Ramanathapuram District.
- 2.The Tahsildar,
Thiruvadanai Taluk,
Ramanathapuram District.
- 3.The Assistant Executive Engineer,
Tsunami Project Implementation Office,
Ramanathapuram.

+1cc to M/S.P.Pethu Rajesh, Advocate SR.No. 72643
+1cc to M/s.D.Panneerselvam, Advocate SR.No. 72466
+1cc to Special Government Pleader, SR.No. 72549

JUDGMENT MADE IN
W.A(MD) NO.746 OF 2011
and
M.P (MD) No.2 of 2011
11.07.2018

vsn
JM/PN/SAR 2/26.07.2018/4P/7C