



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.04.2019**

CORAM:

THE HONOURABLE **MR.JUSTICE K.KALYANASUNDARAM**

and

THE HONOURABLE **MRS.JUSTICE R.THARANI**

W.P. (MD) No.2975 of 2019

Natarajan

...Petitioner

/Vs./

1.The District Collector,
Thiruchirappalli District,
Thiruchirappalli.

2.The Tahsildar,
Lalgudi Taluk, Lalgudi.

3.The Deputy Tahsildar,
Lalgudi Taluk, Lalgudi.

4.Subbiah

5.Selvi

6.Sathiyabala

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the first respondent to take necessary action against the respondents 2 and 3 herein and restore the earlier structure demolished by the respondents 2 and 3 without following the legal requirements of law by considering the petitioner's representation, dated 06.02.2019.

For Petitioner

: Mr.M.Sridharan

For R-1 to R-3

: Mr.Aayiram K.Selvakumar
Additional Government Pleader

For R-5

: Mr.T.Lenin Kumar

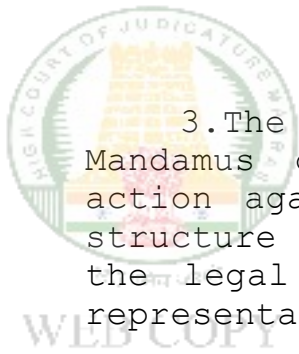
For R-4 & R-6

: No Appearance

ORDER

Heard Mr.N,Sridharan, learned counsel appearing for the petitioner; Mr.Aayiram K.Selvakumar, learned Additional Government Pleader appearing for the respondents 1 to 3 and Mr.T.Lenin Kumar, learned counsel appearing for the fifth respondent.

2.The second respondent was impleaded in his personal capacity and arrayed as sixth respondent. The fourth respondent is the husband of the fifth respondent.



3.The prayer in the writ petition is to issue a writ of Mandamus directing the first respondent to to take necessary action against the respondents 2 and 3 and restore the earlier structure demolished by the respondents 2 and 3 without following the legal requirements of law, by considering the petitioner's representation, dated 06.02.2019.

4.The petitioner would state that he, along with his brother, had constructed a house in Survey No.299/19 and 299/20 in Alunthalaipoor Village, Lalgudi Taluk. The only access to the said property is in Survey No.299/22. The property in Survey No.299/21 is situated on the Eastern side of the petitioner's property and the pathway in Survey No.299/22 and a compound wall is constructed about 100 years ago demarcating the properties in Survey No.299/21 and the petitioner's property in Survey Nos.299/19, 20 and 22.

5.The petitioner would allege that the respondents 4 and 5 have interfered with their peaceful possession and enjoyment of their property by claiming their right of pathway in Survey No.299/22 and hence a police complaint was lodged against the fifth respondent on 31.10.2018. While so, the second respondent has issued a show cause notice under Section 5 of the Tamil Nadu Land Encroachment Act, dated 27.11.2018, for which, the petitioner gave a detailed reply through his counsel on 25.12.2018. However, without considering the reply, the second respondent through his officials demolished the brick wall on 06.02.2019.

6.Mr.M.Sridharan, learned counsel appearing for the petitioner would stated that when the petitioner disputed the right of the private respondents 4 and 5, the second respondent ought to have referred the matter to the Civil Court, instead usurped the power of the Civil Court and demolished the compound wall, which has been in existence for more than 100 years.

7.Mr.Aayiram K.Selvakumar, learned Additional Government Pleader submitted that the demolition had taken place by following the due process, but there is no record to show that the objection of the petitioner was considered and hence, the respondents have withdrawn the notice issued under Section 6 of the Act. It is further submitted that the respondents 1 to 3 have no objection for the petitioner to put up the compound wall which was in existence.

8.Per contra, Mr.T.Lenin Kumar, learned counsel for the fifth respondent would state that the second respondent has rightly demolished the obstruction put up by the petitioner in the public pathway and hence, there is no illegality in the action of the second respondent.

9.However, considering the submission made by the learned Additional Government Pleader that the order passed by the



respondents has been withdrawn, the petitioner is permitted to put up a construction, which was demolished on 06.02.2019. The second respondent shall depute a responsible officer at the time of construction of the compound wall by the petitioner.

10. With the above observations and directions, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (W)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The District Collector,
Thiruchirappalli District,
Thiruchirappalli.

2. The Tahsildar,
Lalgudi Taluk, Lalgudi.

3. The Deputy Tahsildar,
Lalgudi Taluk, Lalgudi.

+1 CC to M/s.M.SRIDHARAN, Advocate (SR-59648[F] dated
08/04/2019)

+1 CC to M/s.T.LENIN KUMAR, Advocate (SR-59612[F] dated
08/04/2019)

RJ2

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08.04.2019

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