

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 20.03.2019

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**W.P. (MD) .No.6589 of 2019**

M.K.Sethuraman

... Petitioner

-vs-

- 1) The District Collector,
Collectorate,
Theni District.
- 2) The District Revenue Officer,
Collectorate,
Theni District.
- 3) The Revenue Divisional Officer,
Periyakulam,
Theni District.
- 4) Velusamy Naicker

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the 3rd Respondent to expedite the enquiry on the Petitioners representation dated 24.09.2018 in compliance with the order passed by the 2nd Respondent in ந.க.எண்.31301/2018/19/ந.சீ.ஈ dated 22.10.2018 demanding restoration of Petitioners property of Punja land in Survey No.503/1E1 at Myladumparai Village Aundipatti Theni District to an extent of 1 ½ Acres and pass orders within a time frame stipulated by this Court.

For Petitioner : Mr.A.Rajaram

For RR 1 to 3 : Mr.D.Muruganandham,

Additional Government Pleader.

O R D E R

The instant writ petition has been filed for a Mandamus to direct the third respondent to expedite the enquiry on the petitioner's representation dated 24.09.2018 in compliance with the order passed by the second respondent in ந.க.எண்.31301/2018/19/ந.சீ.ஈ dated 22.10.2018 demanding restoration of



petitioner's property of Punja lands in Survey No.503/1E1 at Myladumparai Village, Aundipatti, Theni District to an extent of 1½ acres.

2. It is the case of the petitioner that his father Late.Krishnasamy Naidu was allotted 1½ acres of Punja land situated at S.No.503/1E1 at Myladumparai Village, Aundipatti, Theni District through Tamil Nadu Government Urban Land Tax (Ceiling and Regulation) Act on 22.01.1996. According to the petitioner, ever since the allotment of the above said lands, which is also acknowledged by the Assistant Commissioner, Land Reforms Urban Land Tax (Celing and Regulation), Madurai vide certificate dated 30.03.2012, the petitioner's father was in possession of the property.

3. According to the petitioner, his father Krishnasamy died on 11.03.2003 leaving behind himself, his mother Subbammal, his sisters Ellammal, Lakshmi and Velthai as his legal heirs and they become the owners of the property. It is the case of the petitioner that the lands are now in the possession of the fourth respondent, who has occupied the same illegally, thereby, curtailing the enjoyment of the property by the petitioner. It is the case of the petitioner that he lodged a complaint with Kadamalaikundu Police Station on 03.02.2017 alleging commission of trespass by the fourth respondent which was acknowledged vide CSR.44 of 2017 dated 03.02.2017. But according to the petitioner, till date, no action has been taken by the police against the fourth respondent.

4. It is the case of the petitioner that he had also sent another representation dated 24.09.2018 to the second respondent demanding restoration of possession of his land and along with the said letter, a copy of the certificate issued by the Assistant Commissioner, Land Reforms Urban Land Tax (Ceiling and Regulations), Madurai was also enclosed which confirms that under the assignment, his father Krishnasamy was the original owner. The petitioner had also enclosed Patta, Chitta and Adangal for the property standing in the name of his father. According to the petitioner on receipt of the same, the second respondent has directed the third respondent to hold an enquiry and pass appropriate orders on his representation in accordance with law and report the same to him as well as to the petitioner vide its order dated 22.10.2018.

5. According to the petitioner, till date no enquiry has been conducted by the third respondent. Thereafter, the petitioner sent another representation dated 22.02.2019 to the first respondent requesting them to initiate action against the fourth respondent for restoration of possession to the petitioner. Since no action has been initiated till date, the instant writ petition has been filed.



notice for the respondents.

7. The dispute as seen from the affidavit filed in support of the writ petition and after hearing the submissions of the learned counsel for the petitioner, it is clear that the dispute is only between the petitioner and the fourth respondent, who is a private party. Admittedly, the fourth respondent is in possession of the property. The petitioner seeks repossession of the property from the fourth respondent with the assistance of the remaining respondents. Whether the fourth respondent is entitled to retain possession or the petitioner is entitled to take back possession can be adjudicated only by a Civil Court, as disputed questions of facts are involved in this matter.

8. It is settled law that, when there is an alternative efficacious remedy available, the special and extraordinary remedy under Article 226 of the Constitution of India cannot be exercised. The question as to whether the fourth respondent is entitled to retain possession or the petitioner is entitled to take back the possession are all pure questions of fact and could be answered one way or another only by the Civil Court in a properly instituted civil suit on the basis of evidence adduced by the parties but not in a writ petition filed under Article 226 of the Constitution of India.

9. It has been consistently held by the Hon'ble Supreme Court as in the case of **Roshina.T vs. Abdul Azeez K.T. & others** reported in (2019) 2 SCC 329, that a regular suit is appropriate remedy for settlement of disputes relating to property rights between private persons. The remedy under Article 226 of the Constitution of India shall not be available except where violation of some statutory duty on the part of the statutory authority is alleged. For deciding private disputes, this Court cannot allow its constitutional jurisdiction to be used and for deciding such private disputes, the jurisdiction under Article 226 of the Constitution of India, being special and extraordinary remedy, should not be exercised casually or rightly on the mere asking by the litigant. The case on hand is one such case. The petitioner has approached this Court under Article 226 of the Constitution to adjudicate a private dispute with the fourth respondent.

10. For the foregoing reasons, there is no merit in this writ petition. Accordingly, Writ Petition is dismissed. However, the petitioner if so advised is granted liberty to approach the Civil Court to redress his grievance in accordance with law against the fourth respondent. No costs.

sd/
Assistant Registrar



To

1) The District Collector,
Collectorate,
Theni District.

2) The District Revenue Officer,
Collectorate,
Theni District.

3) The Revenue Divisional Officer,
Periyakulam,
Theni District.

+1 CC to Mr.A.RAJARAM, Advocate (SR-55237[F] dated 20/03/2019)

sts

AE/16.04.2019/4P/5C

Order made in
W.P. (MD) .No.6589 of 2019
20.03.2019