



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

W.P.(MD).No.19462 of 2019

and

W.M.P.(MD).No.15904 of 2019

V.Eswaran

... Petitioner

Vs.

- 1.The Commissioner, Office of the
Theni Allinagaram Municipality,
Theni, Theni District.
- 2.The Tahsildar, Office of the Tahsildar,
Ullavar Sandai Road, Theni,
Theni District.
- 3.The District Collector,
Theni, Theni District.
- 4.The Asst.Commissioner Commercial Tax(1)
Treasury Complex Madurai Road,
Theni, Theni District.
- 5.The Executive Engineer (Distribution) Tangedco
NRT Nagar Main Road, Theni,
Theni District.
- 6.K.Murugesan
- 7.R.Shenthil Kimar
- 8.M.Pichaimani
- 9.R.Vijayashankar
- 10.M.Raja

... Respondents

PRAYER: This petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent Nos.1 to 3 to take appropriate action to stop the illegal construction under progress in Survey No.233/1, Allinagaram Village, Theni District by the respondent Nos.6 to 10 and also directing the 5th respondent not to provide new electricity service connection in respect of Survey No.233/1 based on the petitioner's representation dated 31.07.2019.



For Petitioner : Mr.V.Eswaran (Party in Person)
For R1 to R4 : Mr.M.Murugan
Government Advocate
For R5 : Mr.S.M.S.Johny Basha

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ORDER

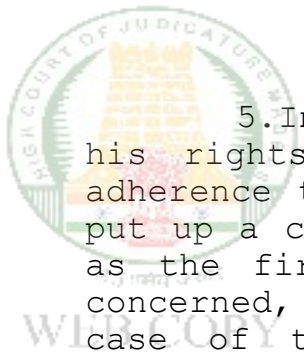
(Order of this Court was made by **T.S.SIVAGNANAM, J**)

Heard Mr.V.Eswaran, learned counsel appearing for the petitioner and Mr.M.Murugan, learned Government Advocate appearing for the respondent Nos.1 to 4 and Mr.S.M.S.Johny Basha, learned counsel appearing for the fifth respondent.

2.In the light of the order to be passed in this writ petition, we do not propose to issue notice to the respondents 7 to 10.

3.The petitioner's grievance is that the respondent Nos. 7 to 10 are putting up unauthorized constructions. The petitioner's case rests upon the title acquired by his wife viz., Tmt.E.Malathi, who appears to have obtained the property by virtue of a settlement deed executed by her mother Thiru.S.Saraswathi. There was a partition suit filed before the Sub Court, Periyakulam in O.S.No.71/1985, by Chinnathayee wherein the petitioner's mother-in-law Saraswathi was the sixth defendant. Upon her demise, the petitioner's wife became the legal heir. According to the petitioner herein, after the demise of his wife, he is now become her legal heir and pursuing the present litigation.

4.Initially, the petitioner would state that illegal construction is going on and in this regard, he referred to the judgment and decree passed by the Sub-Court, Periyakulam, dated 24.04.1992, the copy of the judgment and decree passed in the Appeal Suit in A.S.No.57 of 1993 passed by the Principal District Judge, Madurai dated 13.09.1996 and also the judgment of this Court in S.A.No.1773 of 1996 dated 11.02.2013. Further, it is submitted that the process of subdivision is going on, for which, final decree application has been filed by the petitioner Eswaran and his two sons viz., Maheshwaran and Sathish Kumar, who are the legal heirs of Tmt.S.Malathi, stating that their rights have been finally determined by the civil Court. However the respondents 7 to 10 are unauthorizedly putting up construction on the property and they have no right. In this regard, the petitioner has also given objection to the Electricity Board not to grant any electricity supply. When we enquired the petitioner as to why he has impleaded the Assistant Commissioner of Commercial Tax(1), Theni District, it is submitted that the private respondents have purchased RCC rods on a particular dimension which will be used only for multi-storage buildings and to show that they are putting up illegal construction.



5. In our considered view, the petitioner has confused two of his rights. One being a civil right and another pertaining to adherence to the rules and regulations by a person, who intends to put up a construction. These two issues cannot be mixed up. So far as the first issue regarding the entitlement of the property is concerned, the Writ Court cannot issue any direction. It is not the case of the petitioner that the respondent Nos.7 to 10 have encroached the Government land, road or pathway. With regard to the second aspect viz., as to whether the construction proposed to put up by the respondent Nos.7 to 10 is authorized or not, it is for the first respondent/Municipality to take into consideration. However, considering the complexity of the civil issue, we cannot issue any positive direction to the Municipality. However, we permit the petitioner to pursue his representation before the first respondent Municipality, who shall proceed in accordance with law.

6. With the above observation, this writ petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To:

1. The Commissioner, Office of the
Theni Allinagaram Municipality,
Theni, Theni District.
2. The Tahsildar, Office of the Tahsildar,
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Theni District.
3. The District Collector,
Theni, Theni District.
4. The Asst. Commissioner Commercial Tax(1)
Treasury Complex Madurai Road,
Theni, Theni District.
5. The Executive Engineer (Distribution) Tangedco
NRT Nagar Main Road, Theni,
Theni District.

+1 CC to M/s.V.ESWARAN, Advocate (SR-85891[F] dated 09/09/2019)
+1 CC to M/s.GP (SR-86292[F] dated 12/09/2019)

W.P. (MD) .No.19462 of 2019

and

W.M.P. (MD) .No.15904 of 2019

09.09.2019

ns

JM/03.10.2019/3P/8C

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