



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.09.2019**

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.P. (MD).No.20123 of 2019

and

W.M.P. (MD).No.16664 of 2019

V.Eswaran

... Petitioner

Vs.

1.The Commissioner,
Office of the Theni Allinagaram Municipality,
Theni, Theni District.

2.The Tahsildar,
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.C.Pounmani

... Respondents

PRAYER: This petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent to take action to demolish the illegal construction made in Survey No.1695/1A, Door No.1369-D, Allinagaram Village, Theni District made by the 6th respondent.

For Petitioner : No appearance

For R1 : Mr.K.Hemakarhikeyan

For R2 to R5 : Mr.A.K.Baskara Pandian

Special Government Pleader

ORDER

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

Heard Mr.V.Eswaran, petitioner, who appeared in person, Mr.K.Hemakarhikeyan, learned counsel appearing for the first respondent and Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the respondents 2 to 5.

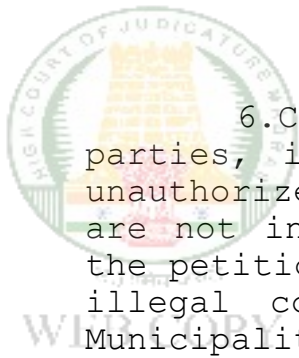


2.By consent of either side, this writ petition is taken up for disposal.

3.The petitioner, who has filed this writ petition as a party-in-person, is not present. Nevertheless considering the prayer sought for in the present writ petition, we perused the affidavit filed in support of the writ petition and also heard the learned Special Government Pleader appearing for the respondents 2 to 5 and the learned Standing Counsel appearing for the first respondent/Municipality.

4.Admittedly, there is a civil litigation between the parties and the same is pending. The suit in O.S.No.71 of 1985, on the file of the Sub-Court Periyakulam, was filed by the petitioner's mother-in-law's sister viz., Chinnathayee by arraying her mother, brother and sister as defendants and the suit for partition was partly allowed by judgment and decree, dated 24.04.1992. The Petitioner would state that the sixth respondent/husband S.V.Chinnamayan and S.V.Swaminathan, who is the fourth defendant, filed an appeal before the District Court, Madurai, challenging the said judgment and decree. The plaintiffs have filed Cross Objection against the disallowed portion. Further, it is stated that the said Swaminathan preferred S.A(MD).No.1773 of 1996 before this Court and it is alleged that the pending disposal of the appeal, the said Swaminathan had effected sale in respect of the suit properties and the application for injunction has been moved in the Second Appeal, wherein an order of status-quo stated to have been granted on 22.10.2010. It is the further case of the petitioner that pending disposal of the Second Appeal, the sixth defendant viz., Saraswathi died on 23.10.2002 and based upon the Will executed by her in favour of the petitioner's wife viz., E.Malathi, she was impleaded as a legal heir of the deceased sixth defendant in the pending S.A. Thereafter, the said Second Appeal, is stated to have been dismissed as abated on 11.12.2013 and the petitioner's wife E.Malathi has initiated final decree proceedings and the mean time, the petitioner's wife passed away and the petitioner has stepped into the shoes of the deceased wife.

5.Thus, on a reading of the affidavit filed in support of the writ petition, is evidently clear that there are civil proceedings pending and the parties are hardly contesting the matter before this Court. Apart from that, criminal complaint has also been lodged by the petitioner against the sixth respondent in Crime No. 2 of 2014 alleging land grabbing. Now, the petitioner would state that the sixth respondent is putting up a construction in Survey No.1695/1A, Door No.1369-D Allinagaram Village, Theni District, without obtaining any planning permission. Further, it is stated that the sixth respondent has also secured commercial electricity supply for the building, which was put up illegally. With these facts, the petitioner wants action to be initiated to demolish the illegal



6.Considering the complicated civil litigation between the parties, it appears that the petitioner's prayer to demolish the unauthorized construction is for a collateral purpose. Therefore, we are not inclined to issue any positive direction as prayed for by the petitioner. However, it goes without saying that if there is any illegal construction without obtaining planning permission, the Municipality has to take appropriate action in accordance with law.

7.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(CS)

To

1.The Commissioner,
Office of the Theni Allinagaram Municipality,
Theni, Theni District.

2.The Tahsildar, Theni, Theni District.

3.The District Collector, Theni, Theni District.

4.The Asst.Commissioner Commercial Tax(1)
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5.The Executive Engineer (Distribution) TANGEDCO
NRT Nagar Main Road, Theni,
Theni District.

+1 CC to M/s.K.HEMAKATHIKEYAN, Advocate SR-88049.

+1 CC to M/s.V.ESWARAN, Advocate SR-88687.

+1 CC to SPL GP SR-88402.

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