



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P (MD) No.22797 of 2019

and

WMP (MD) Nos.19561 and 21968 of 2019

1.S.Mohamed Yasin

2.S.Abuthahir

.. Petitioners

Vs.

1.The District Collector,
Madurai District.

2.The Executive Officer,
Peraiyur Town Panchayat,
Madurai District.

3.Mohammed Abbas

4.Syed Mohammed Abuthahir

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records relating to the impugned notice dated 09.10.2019 in Na.Ka.No.31/2019 passed by the 2nd respondent and quash the same and consequently forbearing the second respondent from canceling the property tax assessment in the name of the petitioners in respect of D.Nos.1-1-84 1-1-85 1-1-92C 1-1-92C1 1-1-92C2 1-1-92C3 1-1-92C4 1-1-92C5 1-1-92D 1-1-92E 1-1-92F 1-1-92G and 1-1-92H Usilampatti Road, Peraiyur in Survey No.93/4B, Peraiyur, Madurai Dist.

For Petitioners: Mr.J.Barathan

For R1 : Mrs.J.Padmavathi Devi
Special Government Pleader

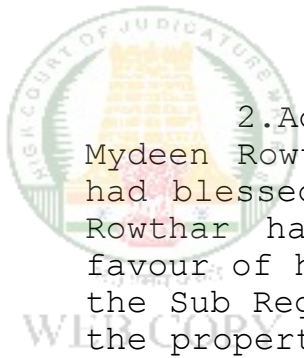
For R2 : Mr.N.Shanmugaselvam

For R3 : Mr.Rajan
for M/s.V.S.Karthi Associates

For R4 : No appearance

ORDER

This writ petition is filed challenging the show cause notice issued on 09.10.2019 in Na.Ka.No.31/2019 by the second respondent/Executive Officer of Peraiyur Town Panchayat.



2. Admittedly, the subject properties belonged to one Nagoor Mydeen Rowthar under the registered partition dated 15.07.1978. He had blessed with a son and three daughters. The said Nagoor Mydeen Rowthar had also executed a will bequeathing his properties in favour of his four children. On 28.02.1990, it was registered before the Sub Register Office, Peraiyur. It is also seen that a portion of the property was sold on 13.01.1995 by the heirs of the said Nagoor Mydeen Rowthar in favour of the petitioners herein. As there were adverse claims against the petitioners, O.S.No.273 of 1997 was filed before the Sub Court, Madurai and it was decreed in their favour. The respondents 3 and 4 are the sons of one of the daughters of the said Nagoor Mydeen Rowthar. It is stated that since she was not given any share, she instigated her sons to file fictitious litigations. The fourth respondent has also filed a suit in O.S.No.509 of 2012 on the file of the District Munsif Court, Thirumangalam. Later, it was transferred to the file of District Munsif Court, Peraiyur and renumbered as O.S.No.227 of 2013. Yet another suit was filed by the mother of the respondents 3 and 4 before the Principal Sub court, Madurai in O.S.No.282 of 1995 for partition, mesne profits and mandatory injunction. All the suits are still pending. It is also stated that the impugned notice was issued at the instigation of the respondents 3 and 4. The impugned notice is nothing but a show cause notice. Normally, it cannot be put to challenge under Article 226 of the Constitution of India.

3. On going through the notice, it is seen that the petitioners were called upon to prove their title to the subject property, failing which, name transfer will be effected in the name of one Nagoor Mydeen Rowthar. The said Nagoor Mydeen Rowthar is dead and there are rival claims based on the will executed by him. The Executive Officer cannot issue such a notice stating that the entries will be changed in the name of a deceased person.

4. Be that as it may. Yet another notice issued by the same respondent/Executive Officer was challenged before the Division Bench of this Court in W.P(MD)No.23601 of 2019 with a consequential prayer to forbear the second respondent therein from initiating any action for demolition and removal of the subject properties. This Court, by order dated 08.11.2019, while quashing the impugned notice, directed the second respondent to issue notice to the petitioners, call for original approved building plan, conduct inspection of the building in the presence of the petitioners, note down the physical features and if there is any deviation found, after issuing show cause notice, proceedings should be initiated in accordance with law.

5. While this exercise has not yet been commenced and the title of the property is in dispute in the suits, that are pending between the parties, the impugned notice ought not to have been issued by the Executive Officer. Therefore, the impugned notice is quashed. The second respondent in Na.Ka.No.31/2019 dated 09.10.2019



is quashed as unsustainable and the writ petition is allowed accordingly. No costs. Consequently, WMP(MD)Nos.19561 and 21968 of 2019 are closed.

WEB COPY

// True Copy //

Sd/-

Assistant Registrar (W)

Sub Assistant Registrar(CS)

mj

To

The District Collector,
Madurai District.

+1 CC to M/s.V.S.KARTHI ASSOCIATES, Advocate (SR-103432[F] dated 04/12/2019)

+1 CC to M/s.SPL GP (SR-103574[F] dated 05/12/2019)

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-103718[F] dated 05/12/2019)

W.P (MD) No.22797 of 2019
04.12.2019

SMA/18/12/19/3P/5C