



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.11.2019

CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI**

W.A. (MD)No.1218 of 2019

Eswaran

... Appellant

Vs.

- 1.The Commissioner of Municipal Administration,
Office of the Municipal Administration Department,
Ezhilagam Annex, 6th Floor, Chepauk, Chennai.
- 2.The Director, Office of the Directorate of Vigilance
and Anti-Corruption, 293, MKN Road,
Collectors Nagar, Alandur, Chennai.
Tamil Nadu-600 016.
- 3.The Commissioner,
Office of the Theni Allinagaram Municipality,
Theni, Theni District.
- 4.The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai-600 009.
- 5.The Tahsildar, Office of Thasildar,
Ullavar Sandai Road, Theni,
Theni District.
- 6.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Thasildar Nagar, Thamaraiikulam,
Periyakulam, Theni District.
- 7.The District Collector,
Theni, Theni District.
- 8.The Assistant Commissioner Commercial Tax (1),
Treasury Complex Madurai Road,
Theni, Theni District.
- 9.The Joint Commissioner / Commercial Tax Officer,
Dr.Thangaraj Salai, K.K.Nagar, Madurai-20.



10.The Executive Engineer (Distribution)
TANGEDCO, NRT Nagar Main Road,
Theni, Theni District.

..Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letter Patent Act, to set aside the order passed by this Court in W.P.(MD)No.22003 of 2019, dated 17.10.2019 by allowing this writ appeal.

Prayer in WP(MD). 22003/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Directing the respondents Nos 1 to 2 to enquire into the petitioners complaint dated 10.06.2019 and pass necessary orders within the time fixed by this Honourable Court

For Appellant : Mr.V.Eswaran
party in person

For Respondents : Mr.M.Murugan
Government Advocate

JUDGMENT

[Judgment of this Court was delivered by **T.S.SIVAGNANAM, J.**]

Heard Mr.V.Eswaran, petitioner, who appeared in-person and Mr.M.Murugan, learned Government Advocate for the respondents. By consent on either side, this writ appeal is taken up for final disposal.

2. This appeal is directed against the order made in W.P.(MD) No.22003 of 2019, dated 17.10.2019. The writ petition was filed, praying for a direction to the Commissioner of Municipal Administration and Director of Vigilance and Anticorruption to enquire into his complaint dated 10.06.2019, which was sent by the appellant by registered post and the same has been received in the office of both the respondents. The learned Single Bench dismissed the writ petition, stating that it is not maintainable as the dispute is pending before the civil Court. The correctness of the said order is challenged in this appeal.

3. Apparently, it appears that there is a complicated civil dispute between the parties, but the scope of the writ petition is slightly different. Therefore, we are inclined to interfere with the order passed in the writ petition. The suit for partition was filed by one Chinnathai in O.S.No.71 of 1985 on the file of the Sub Court, Periyakulam. The second defendant in the said suit is one Ochammal, who is the mother-in-law of the appellant. She had left behind four legal heirs, one of whom is the appellant's wife, who is



no more. The appellant and his son are the legal heirs of the appellant's wife / Malathi.

4. In the writ petition, the appellant /petitioner's contention is that the sixth defendant, one Saraswathi was granted 1/6th share in the said partition suit, by judgment and decree dated 24.04.1992 and she has settled the said property in favour of the appellant's wife and after her demise, the petitioner and his son are entitled to the property. It is submitted that the said judgment and decree attained finality, since the appeal against the said judgment filed by one Saminathan, the fourth defendant in the original suit in A.S.No.57 of 1993, was dismissed by the Principal District Court, Madurai, by judgment dated 13.09.1996. Along with the said appeal, cross objections were filed by the plaintiff, Chinnathai and an judgment was passed therein.

5. Aggrieved by the same, S.A.(MD)No.1773 of 1996 was filed by the fourth respondent, Swaminathan. In the said second appeal, the petitioner's mother-in-law / Ochammal was the second respondent and she had filed M.P.(MD)No.1 of 2010 to restrain the respondents from alienating or creating any encumbrance in respect of the suit property, which was the subject matter of O.S.No.71 of 1985, till the disposal of the second appeal. An order of *status-quo* was granted on 22.10.2010. However, the second appeal stood dismissed as abated on 11.02.2013. No steps were taken to bring the legal heirs on record. Thus, the judgment and decree passed by the civil Court attained finality.

6. It is the submission of the appellant that while the factual situation remains thus, the third respondent, namely, the Commissioner of Theni, Allinagaram Municipality had effected change of the property assessment in the name of Sandheep, who is none other than the son of Swaminathan / fourth defendant in the original suit. It is submitted that objection was given for change of the property tax assessment and taking note of the objection given by the appellant's wife Mrs.Malathi, the Commissioner / third respondent, by proceedings dated 02.02.2015, kept the property tax assessment in the name of Sandheep in abeyance.

7. It is the submission of the appellant that though such order was passed, the Commissioner in collusion with said Sandheep had granted building plan approval for the said property and the property was developed and sale has also effected in favour of the third parties. The appellant is pursuing other remedies for getting a final decree. It is submitted that the property has already been measured. In this litigation, the appellant seeks for enquiry against the conduct of the Commissioner in granting building plan approval. This representation has been sent to the first respondent. Curious enough, when the petitioner sought for information under the Right to Information Act, the information



30.10.2015, stated that no building plan approval has been granted for K.F.J. Hotel. It is submitted that the said promoter of the said building is one C.Pounmani, who is the 11th respondent in S.A. (MD)No.1773 of 1996. The question is whether the mutation of the name of Sandheep in the property tax assessment was validly done, because the appellant would state that the final decree proceedings is pending and property remains undivided. Since the said Swaminathan has not been impleaded as party in this writ petition, we cannot issue any positive direction as sought for by the petitioner, but we inclined to issue appropriate direction to the first respondent.

8. In the light of the above, this writ appeal is allowed and the order passed in the writ petition is set aside and consequently, the writ petition is dismissed by directing the first respondent to consider the petitioner's representation / complaint, dated 10.06.2019, cause necessary enquiry and pass a speaking order, on merits and in accordance with law and communicate the same to the appellant, within a period of twelve weeks from the date of receipt of a copy of this judgment. With regard to the other limb of the prayer, namely, to conduct enquiry by the vigilance, we are not inclined to issue any such direction for the present. It is open to the petitioner to work out his remedy in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

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To

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+1 CC to M/s.V.EASWARAN, Advocate (SR-97860[F] dated 13/11/2019)

+1 CC to M/s.GP (SR-98433[F] dated 14/11/2019)

ORDER MADE IN
W.A. (MD)No.1218 of 2019
13.11.2019

JMN(11.12.2019) 5P : 13C