

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R. HEMALATHA

WP.No.11429 of 2020
and W.M.P.Nos.13937 & 13940 of 2020

M.Veluchamy ... Petitioner

Versus

1. The District Collector,
Erode District,
Erode.
2. The Revenue Divisional Officer,
Sathyamangalam Taluk,
Sathyamangalam, Erode District.
3. The Tahsildar,
Sathyamangalam Taluk,
Sathyamangalam, Erode District.
4. The Commissioner,
Punjai Puliampatti Municipality,
Pujai Puliampatti,
Sathyamangalam Taluk,
Erode District 638 459.

5.S.Raja Ramalingam .. Respondents
(5th respondent is impleaded vide order
dated 09.11.2020 in W.M.P.No.17469 of 2020)

Prayer:- Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus Calling for the records of order in Na.Ka. No. 620/ 2016/ A1 dated 19.01.2017 and consequential order in Na. Ka.No. 620/ 2016/ F1 dated 27.07.20120 on the file of 4th respondent herein and quash the same and consequential forbearing the 4th Respondent from evicting the petitioner from his land without following due process of law and pass.

For Petitioner : Mr.N.Ponraj

For Respondents: Ms.R.J.Radhika
Government Advocate for R1 to R3

Mr.V.Jayaprakash Narayanan
Government Pleader for R4

Mr.N.L.Rajah, Senior Counsel
assisted by Mr.narasimhan
for impleaded respondent

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioner is a resident of Punjai Puliyampatti Village, Erode District and according to him, he is in possession of land admeasuring an extent of 0.14.5 hectare at S.F.No.104 (old S.F.No.109) in Sengunthapuram, Punjai Puliyampatti Village and the said land has been sub divided and the petitioner is in possession of 0.02 hectare at S.F.No.104/17, 0.07 hectares at S.F.No.104/105, 0.00.5 hectare at S.F.No.104/106 and 0.03 hectare at S.F.No.104/107 and 0.02 hectare at S.F.No.104/108 of the said Village.

2. The petitioner would aver among other things that the said lands have been given to the petitioner through a registered Settlement Deed dated 07.09.2016, bearing Doc.No.4146 of 2009, registered on the file of the Sub Registrar, Punjai Puliyampatti Village and the said property was purchased by the father of the petitioner in terms of decree passed in O.S.No.1819 of 1974, on the file of the District Munsif, Gobichettipalayam, vide Sale Deed bearing Doc.No.64 of 1978, on the file of the Sub Registrar of Punjai Puliyampatti. The petitioner decided to put up a new superstructure by demolishing the old building and also obtained necessary planning permission / license from the 4th respondent and constructed the building by strict adherence to the planning permission and approval. However to the shock and surprise of the petitioner, the 4th respondent, under the guise of a notice, directing the petitioner to remove the encroachment and stating among other things that the petitioner had caused encroachment by putting up a superstructure and interfering the land in S.F.No.104/107 and the extent of encroachment on the western side of the above construction is about 3.7 metres on the east west and on the south east about 4.0 metres by ceiling roof on street and that apart also erected bamboo gate and iron gate on the said street and the said proceedings are put to challenge by the petitioner

by filing W.P.No.23391 of 2016 and this Court has set aside the order and remanded the matter to the respondents for further enquiry, after affording opportunity to the petitioner and thereafter, the 4th respondent has passed an order and the same was subject matter of challenge before this Court.

3. The petitioner filed a Suit in O.S.No.21 of 2017, on the file of the District Munsif, Sathyamangalam against the Collector, Erode District, the Sub Collector, Gobichettipalayam, the Tahsildar, Sathyamangalam and the Commissioner, Punjaipuliampatti Village for a declaration that he is the absolute owner of the landed property in S.F.No.104/107 admeasuring an extent of 0.03.0 hectre and common pathway as well as western side east-west 3.7 meters and north-south 4.0 meters and the terrace building as well as a bamboo gate in front of the general pathway and in centre portion one steel gate fixed and also for permanent injunction restraining the respondents from interfering with the peaceful possession and enjoyment of the property.

4. The learned counsel appearing for the petitioner would submit that the counsel appearing for the plaintiff in the Suit became ill and therefore, the Suit came to be dismissed for default and to restore the same, there was some delay in filing the restoration petition. Therefore, condone delay petition for filing a petition, to set aside the order dismissing the Suit for default, has been filed and the same is pending adjudication and in the interregnum, the impugned notice came to be issued on the wrong pretext.

5. The primordial submission made by the learned counsel appearing for the petitioner by drawing attention of this Court to the additional typed set of documents is that in the light of availability of very many documents of sterling quality, it is not open to the respondents to conduct a summary enquiry and in the light of serious disputed question of fact as to the ownership of the property, it is not open to the respondents to invoke the relevant provisions of the District Municipalities Act and prays for interference.

6. Per contra, the learned counsel appearing for the 3rd respondent would submit that the petitioner as per the report of the Revenue Inspector. the natham field bearing R.S.No.104/107 admeasuring an extent of 0.03.0 hectare has been recorded in the Village accounts as 'Government Poromboke' - (Theru Street) and the petitioner has put up a building and Tuition centre and play school in the name of Sivasakthi Tution Centre and Sivasakthi play school in his own land and also in the encroached portion with an extent of 1.6 meter on the Government Poromboke land bearing R.S.No.104/107 by putting bamboo gate in the eastern

side and steel gate in the middle and therefore, action has been taken strictly in accordance with law.

7. The learned counsel appearing for the 4th respondent has drawn the attention of this Court to the counter affidavit and would submit that in the light of encroachments caused, action has been taken strictly in accordance with law.

8. This Court has carefully considered the rival submissions and also perused the materials placed before it.

9. It is relevant to extract Section 182 of the Tamil Nadu District Municipalities Act, 1920:

182. Removal of encroachments .- (1) The [Executive Authority] may, by notice, require the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction (other than a door, gate, bar or ground-floor window) situated against or in front of such premises and in or over any street.

(2) If the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto or that it was erected or made with the permission or licence of any municipal authority duly empowered in that behalf, and that the period, if any, for which the permission or licence is valid has not expired, the Municipal Council shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same.

10. It is to be noted at this juncture that the petitioner has filed a comprehensive Suit in O.S.No.21 of 2017, on the file of the District Munsif, Sathyamangalam and unfortunately, the Suit came to be dismissed for default on 04.12.2018 and admittedly, immediately after the institution of the Suit, the petitioner being a plaintiff, failed to get any interim orders. Be that as it may, for restoration of the Suit, there is some delay and an application to condone the same is also pending consideration on the file of the said Court. Though the learned counsel appearing for the petitioner has drawn the attention of this Court to the voluminous additional typed set of documents and would submit that in the light of the overwhelming documents of sterling quality, he is having right, title and possession in respect of the alleged property in question, this Court is unable to consider the same for the reason that it revolves adjudication on the disputed question of fact and that apart, as and when the Civil Suit in O.S.No.21 of 2017, on the file of the

Court of District Munsif, Sathyamangalam. is taken for hearing, the plea of the petitioner may be considered and adjudicated depending upon the pleadings and quality of evidence being let in.

11. Though a vehement plea has been made by the learned counsel appearing for the petitioner to persuade this Court by drawing the attention to the documents filed in the additional typed set of documents dated 03.11.2020, this Court is unable to come to the aid of the petitioner for the reason that appreciation of the said documents falls within the domain of the Civil Court and this Court in exercise of it's jurisdiction under Article 226 of the Constitution of India may not venture into such a kind of exercise.

12. Be that as it may, the petitioner is permitted to submit a representation in terms of Sub Section 2 of Section 182 of the Tamil Nadu District Municipalities Act, 1970, by enclosing relevant and authenticated documents, within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the Executive Authority, namely, the 3rd respondent is directed to consider and pass orders in accordance with law, within a further period of two weeks thereafter and till such time, shall defer further decision in terms of the impugned notice. It is also made clear that this Court have not gone into the merits of the claim projected by the petitioner as to his entitlement, in respect of the land in question.

13. The Writ Petition is disposed of, accordingly. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
Erode District,
Erode.

2.The Revenue Divisional Officer,
Sathyamangalam Taluk,
Sathyamangalam, Erode District.

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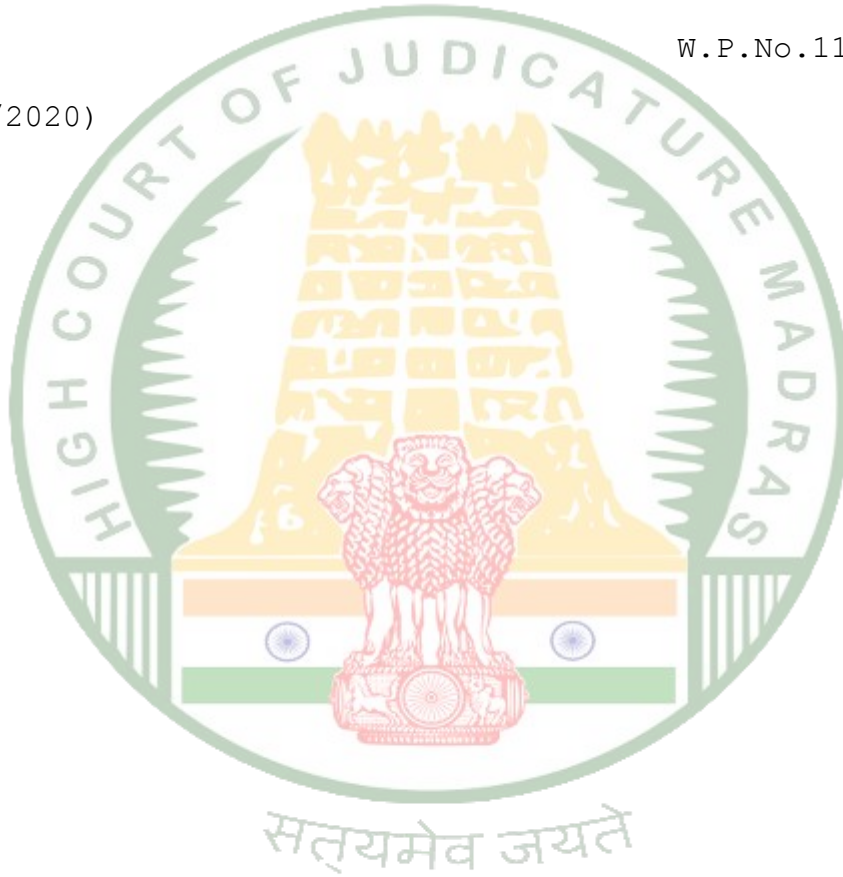
3.The Tahsildar,
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4.The Commissioner,
Punjai Puliampatti Municipality,
Pujai Puliampatti,
Sathyamangalam Taluk,
Erode District 638 459.

+1 cc to M/s. V.Jayaprakash Narayanan, Advocate Sr.No. 36421

W.P.No.11429 of 2020

VSNII (CO)
RMP (15/12/2020)



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