

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.09.2020

CORAM

THE HONOURABLE THIRU JUSTICE N.ANAND VENKATESH

W.P.No.12212 of 2020 and  
W.M.P.Nos.14968 & 14969 of 2020

M/s.Vellore RK Residency Welfare Association,  
Rep by its President K.Thangaraj,  
Mohanur Road, Paramathivellore,  
Namakkal District.

...Petitioner

versus

1. The District Collector,  
Namakkal.
2. The Revenue Divisional Officer,  
Thiruchengodu, Namakkal District.
3. The Tahsildar,  
Paramathivellore, Namakkal District.
4. The Executive Officer,  
Paramathivellore Town Panchayat,  
Namakkal District.
5. R.Palanivelan,  
Son of Rajappa Gounder,  
Melmugam Village,  
Paramathivellore Taluk,  
Namakkal District.
6. R.Saminathan,  
Son of Rajappa Gounder,  
Melmugam Village,  
Paramathivellore Taluk,  
Namakkal District.
7. The Assistant Director,  
Town Panchayats,  
Salem.

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the  
Constitution of India, praying for issuance of Writ of

Certiorarified Mandamus, to call for the records relating to impugned notice of the fourth respondent dated 22.05.2020 in Na.Ka.No.603/2019/A1 and notice dated 08.06.2020 in Na.Ka.No.603/2019/A1 of the fourth respondent in respect of the property on the southern side of Velur R.K.Residency situated at S.No.413/1A1 Mohanoor Road, Paramathi Velur, Namakkal District and quash the same and direct the fourth respondent to permit the petitioner to reconstruct the compound wall on the southern side of Velur RK Residency, Paramathivelur.

For Petitioner : Mrs.A.L.Ganthimathi  
For Respondents: Mr.E.Balamurugan for R1 to R4, R7  
Mr.V.Raghavachari, for R5

ORDER

On the consent given by either side, the main writ petition itself has been taken up for final hearing.

2. This writ petition has been filed challenging the impugned notice issued by the fourth respondent dated 22.05.2020, and the subsequent notice dated 08.06.2020 and for a consequential direction to the fourth respondent to permit the petitioner to reconstruct the compound wall.

3. Earlier, a writ petition was filed before this Court in W.P.No.9596 of 2020, challenging the very same impugned notice issued by the fourth respondent. This writ petition was dismissed as withdrawn by an order dated 24.07.2020. It is brought to the notice of this Court that pursuant to the dismissal of the above said writ petition, the compound wall that was in existence in the subject property was demolished by the fourth respondent.

4. The learned counsel appearing for the petitioner submitted that the fourth respondent is proceeding further to lay a permanent road on the assumption that the subject property belongs to the fourth respondent. In view of the dismissal of the earlier writ petition, an impression has been created as if the petitioner has no right over the property and therefore, it stands in the way of the petitioner who want to agitate their right by making appropriate amendment in the plaint and the relief sought for in O.S.No.6 of 2020.

5. Heard the learned counsel appearing for the petitioner and Mr.E.Balamurugan, learned Special Government Pleader appearing for the respondents 1 to 4 and 7.

6. In the considered view of this Court, the substantial right of the petitioner over the subject property lies in the

pending suit in O.S.No.6 of 2020, before the District Munsif Court, Paramathivellore. In the said suit, the fourth respondent herein is the defendant. That apart, there is yet another suit pending in O.S.No.99 of 2019, which is also filed by the petitioner against the fourth respondent herein calling for the relief of permanent injunction and mandatory injunction. Apart from this, there is yet another suit pending in O.S.No.86 of 2019, which is filed by the vendor of the petitioner as against the respondents 4 to 6 herein. In all the three suits, the subject property involved is S.No.413/1A1.

7. This Court is not inclined to entertain this writ petition only on the ground that there is a substantial claim pending before the Civil Court and therefore, the petitioner cannot be permitted to parellessly prosecute the writ petition. That apart, the resolution of the dispute involves appreciation of facts which can only be done by the competent Civil Court, based on the oral and documentary evidence. It is made clear that this Court did not go into the merits of this case and this Court did not express any opinion on the right of the parties.

8. In view of the above, it is made clear that the dismissal of the writ petition cannot be put against the petitioner and the Civil Court should independently consider the claim made by the petitioner and the respondents, based on the oral and documentary evidence. By giving this clarity, the Civil Court will not be influenced by the order passed by this Court in this writ petition.

9. This Court is not inclined to entertain this writ petition and it is left open to the parties to agitate the entire dispute before the competent Civil Court where the suits are pending.

10. With the above observation, this writ petition is disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Collector,  
Namakkal.

2. The Revenue Divisional Officer,  
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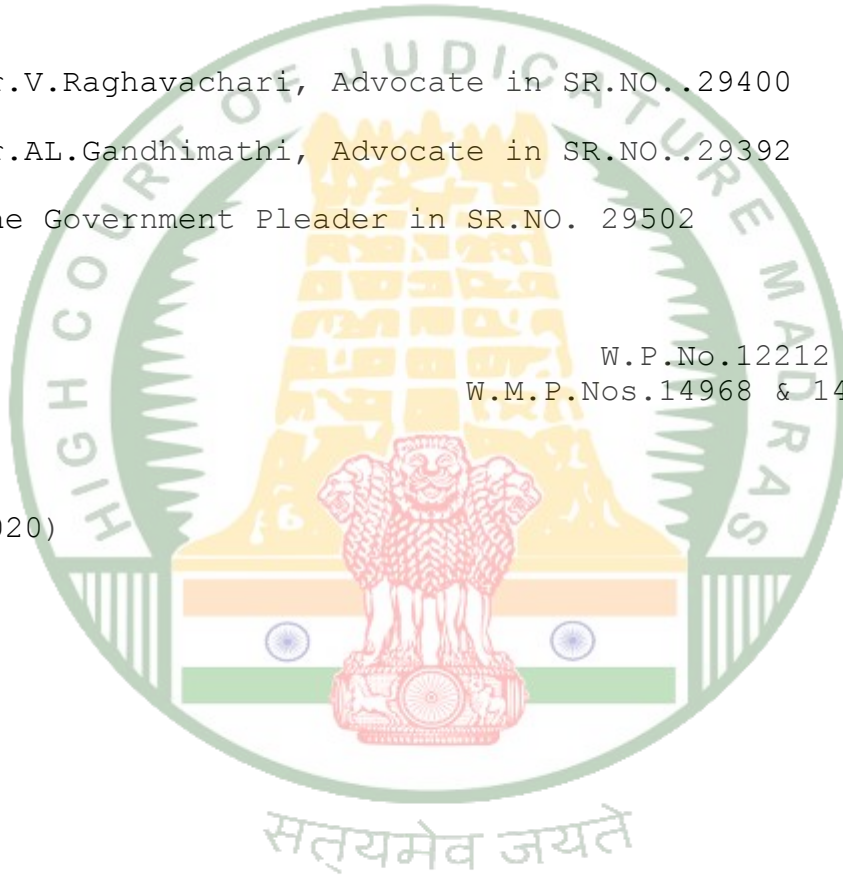
+1cc to Mr.V.Raghavachari, Advocate in SR.NO..29400

+1cc to Mr.AL.Gandhimathi, Advocate in SR.NO..29392

+1cc to the Government Pleader in SR.NO. 29502

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SR(CO)  
RV(30/9/2020)



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