

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.10.2020

CORAM

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

WP.No.15116/2020 & WMP.No.18861/2020

Ashraf Ali

.. Petitioner

Versus

1. The District Collector
Thiruvarur District.

2. The Revenue Divisional Officer
Mannargudi, Thiruvarur District.

3. The Tahsildar
Thiruthuraipoondi,
Thiruvarur District.

.. Respondents

Prayer:-

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the record of the 3rd respondent in his proceedings in Na.Ka.3644/2016/Aa dated .09.2020 and quash the same as illegal incompetence and wholly without jurisdiction and also forbearing the respondents from taking any coercive action to dispossess or demolish the structure of Millennium Matriculation School at S.No.152/2, 118/1 in Nachikulam Village, Udhayathandapuram, Thiruthuraipoondi Taluk, Thiruvarur District.

For Petitioner : Mr.G.Mohammed Asheef

For Respondents: Mr.M.Elumalai
Additional Government Pleader

ORDER

(1)By consent, the writ petition is taken up for final disposal and is disposed of by this order.

(2)Mr.M.Elumalai, learned Additional Government Pleader accepts notice on behalf of the respondents.

(3)The petitioner, on an earlier occasion, filed WP.No.33411 of 2019 against the respondents herein as well as against the Block Development Officer, Muthupettai, Tiruvarur District, praying for issuance of a writ of mandamus, forbearing the respondents therein from taking any coercive action to dispossess or demolish the structure of Millennium Matriculation School, in S.No.152/29, 152/30 in Nachikulam Village, Udhayathandapuram, Thiruthuraipoondi Taluk, Thiruvarur District and the said writ petition came to be disposed of on 28.11.2019 and it is relevant to extract the said order:-

'The petitioner is running a Millennium Matriculation School and on the premise that there is a likelihood of demolition of the School with specific reference to S.Nos.152/29, 152/30 in Nachikulam Village, Udhayathandapuram, Thiruthuraipoondi Taluk, Tiruvarur District, the present writ petition has been filed before this Court.

2.The learned counsel for the petitioner submitted that earlier, the wall has been demolished. Now, an attempt is being made to demolish the main building.

3.The learned Special Government Pleader appearing for the respondents-State, on instructions, submitted that the aforesaid wall has been demolished after due process, in pursuant to the order passed in WP.No.31053 of 2019. The wall was situated in the encroached portion in Survey No.152/2. The petitioner's School is situated at Survey No.152/29 and 152/30 which are not under encroachment. Therefore, there is no question of demolition of the said Survey Nos.152/29 and 152/30 in Nachikulam Village, Udhayathandapuram, Thiruthuraipoondi Taluk, Tiruvarur District.

4.In view of the aforesaid submissions, the apprehension of the petitioner is misplaced. There is no demolition undertaken in Survey Nos.152/29 and 152/30, in which, the School building has been put up.

5.With the aforesaid observations, this Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.'

- (4) The 3rd respondent, after referring to the order dated 02.03.2020 made in WP.No.31053 of 2019 [P.V.R.Vivekananthan V. The Additional Chief Secretary and Commissioner of Land Administration, Chepauk, Chennai-5 and Others], in and by which, a direction has been given by directing the respondents to take appropriate action and to complete the process of removal of encroachment by following due process of law expeditiously, has issued the impugned Notice dated 29.09.2020 under Section 6 of the Tamil Nadu Land Encroachment Act, 1905.
- (5) The learned counsel for the petitioner would submit that the said Notice came to be issued suddenly and in the light of the apprehension that on the pretext of encroachment, part of the School building is also likely to be demolished, the petitioner filed a Statutory Appeal under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, with a petition for stay under Section 10B of the said Act before the 1st respondent on 05.10.2020 and without taking the appeal and giving a disposal to the petition for stay, steps are being taken to demolish the offending construction which is said to have been encroached upon the Government land in S.Nos.152/2 and 118/1 in Nachikulam Village, Udhayathandapuram, Thiruthuraipoondi Taluk, Thiruvavarur District and prays for appropriate orders.
- (6) Per contra, the learned Additional Government Pleader appearing on behalf of the respondents would submit that due process of law is being followed and that apart, the petitioner has also invoked the statutory appeal remedy and hence, the present writ petition is per se not maintainable.
- (7) This Court has considered the rival submissions and also perused the materials placed before it.
- (8) Though the petitioner has made a challenge to the impugned Notice issued by the 3rd respondent dated 29.09.2020, the fact remains that he has invoked the statutory appeal remedy under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, by filing an appeal dated 05.10.2020, before the 1st respondent along with the petition for stay.
- (9) This Court, taking note of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, either in the appeal petition or in this writ petition, directs the 1st respondent / delegated appellate authority, to entertain the said appeal and the petition for stay, if the papers are otherwise in order and take up the petition for stay at the first instance and give a disposal in accordance with law within a period of four weeks from the date of receipt of a copy of this order and till such time, the 3rd respondent shall defer further decision in terms of the

impugned Notice dated 29.09.2020. It is also open to the 1st respondent or the delegated appellate authority to accord priority and dispose of the appeal itself at an early date. It is also made clear that till the disposal of the appeal by the 1st respondent or the delegated appellate authority, shall not create any third party rights and shall also not alter the physical features of the building which is said to have encroached upon the Government land in S.Nos.152/2 and 118/1 at Nachikulam Village, Udhayathandapuram, Thiruthuraipoondi Taluk, Thiruvarur District.

(10)The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IiI)

//True Copy//

Sub Assistant Registrar

AP

To

1. The District Collector
Thiruvarur District.
2. The Revenue Divisional Officer
Mannargudi, Thiruvarur District.
3. The Tahsildar
Thiruthuraipoondi,
Thiruvarur District.

+1cc to Mr.G.Mohammed Asheef, Advocate, S.R.No.3455
+1cc to the Government Pleader, S.R.No.34768

WP.No.15116 of 2020

NRL(CO)
CS/03/12/2020

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