

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.NO.35892 OF 2019
AND
WMP.NO.36800 OF 2019

R.Prabhu

... Petitioner

Vs

1. The District Collector,
Coimbatore District,
Coimbatore.
2. The Executive Officer,
Narashimma Naickenpalayam
Town Panchayat,
Coimbatore 641 031.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 17.10.2019 made in Na.Ka.No.148/2019 passed by the second respondent, quash the same and consequently forbear the second respondent from interfering with the petitioner's right to property measuring 702 sq.ft., comprised in old S.F.No.376/3, New S.No.376-2-0, Narasimmanaickenpalayam Village, Coimbatore North Taluk.

For Petitioner : Mr.N.Manoharan

For Respondents: Mr.V.Shanmuga Sundar
Special Govt.Pleader for R1
Mr.P.S.Sivashanmuga Sundaram
Special Government Pleader for R2

O R D E R

[Order of this Court was made by R.SUBBIAH, J]

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 17.10.2019 made in

Na.Ka.No.148/2019 passed by the second respondent quash the same and consequently forbear the second respondent from interfering with the petitioner's right to property measuring 702 sq.ft., comprised in old S.F.No.376/3, New S.No.376-2-0, Narasimmanaickenpalayam Village, Coimbatore North Taluk.

2. It is the case of the petitioner that one P.Chinnasamy bought an extent of 2.54 acres in S.F.No.376/2 & 2.24 acres in S.F.No.377/1 and one S.Manickaraj had purchased 1.94 acres in S.F.No.404/3. The duo, then formed a layout pursuant to an order of approval. The promoters also executed gift deeds in favour of the local body for the purpose of park and road facilities. While so, an extent of 3 cents and 342 sq.ft in S.F.No.376/2 were sold by P.Chinnasamy to Chinnammal. Thereafter, Chinnammal sold the property to R.Palanisamy and later Palanisamy sold it to M.Subramaniam and K.A.Murugesan. The said M.Subramaniam and K.A.Murugesan sold 1 cent and 266 sq.ft of the total extent to one R.Vijayabaskar. Lastly, the petitioner has purchased the subject matter property of 1 cent and 266 sq.ft from R.Vijayabaskar on 12.09.2018 after verifying the marketable title of his vendor and effected mutation in his name. The petitioner also is in possession of the subject property. Then, the second respondent has sent a communication to the Tahsildar, Coimbatore North to remove the obstructions in S.F.No.376/3 on the basis of a petition given by a stranger. The second respondent has issued a notice directing the petitioner to not put up any construction in and over the subject property. The petitioner has submitted a detailed explanation disclosing all the sale deeds tracing his title, but the second respondent has issued a final notice directing the petitioner to remove the non existing superstructure in the extent of 1610 sq.ft. The petitioner has not put up any construction till this date. Aggrieved by the impugned final notice passed by the second respondent to remove the non-existing structure in the subject property, the petitioner has filed the present writ petition.

2. Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader appearing for second respondent filed counter affidavit of the second respondent, in which it is stated that the petitioner herein has encroached the land in Old S.F.No.376/3, New S.No.376-2-0 which is exclusively reserved for open space. Hence the second respondent herein issued final notice in Na.Ka.148/2019, dated 17.10.2019 and called upon the petitioner to remove the encroachment. The petitioner challenged the said notice in the present writ petition. The second respondent by its letter Na.Ka.148/2019 dated 25.11.2019 requested the Tahsildar, Coimbatore North, Coimbatore District to furnish the survey report dated 22.06.2019, which contained the details of the measurement area encroached by the petitioner herein and on receipt of the report, the same would be furnished before this

Court. Hence he sought for dismissal of the writ petition.

3. Be that as it may. This Court is not conducting any roving enquiry under Article 226 of Constitution of India in the dispute involved in this writ petition. Therefore this Court is constrained to pass the following order.

(i) The second respondent is directed to conduct enquiry into the dispute involved in this writ petition and afford an opportunity of personal hearing to the petitioner and the second respondent is also directed to conduct survey in respect of the property in question in the presence of the petitioner with the help of a Taluk surveyor and thereafter pass appropriate orders on merits and in accordance with law, with regard to the alleged encroachment.

(ii) The entire exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

4. With the above direction, the writ petition is disposed of. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The District Collector,
Coimbatore District,
Coimbatore.

2. The Executive Officer,
Narashimma Naickenpalayam
Town Panchayat, Coimbatore 641 031.

+1cc to Mr.N.Manoharan, Advocate, S.R.No.10752

W.P.No.35892 of 2019
and WMP.No.36800 of 2019

SR(CO)
CS/13/03/2020