



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD)No.8426 of 2020

and

W.M.P. (MD)No.7819 of 2020

Pathinen Siddhar Nursery and Primary School,
represented through its Correspondent,
R.Muthurajamoorthy.

... Petitioner

Vs.

1.The District Collector,
Sivagangai District.

2.The Tahsildar,
Karaikudi Taluk,
Sivagangai District.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the first respondent to take up the appeal and stay petition, filed by the petitioner under E4 No.10420/20 for hearing and dispose of the same and till such disposal stay the operation of the proceedings of the second respondent in Na.Ka.No.A5 2137/2020, dated 21.05.2020 and the consequential notice of the second respondent dated 17.06.2020.

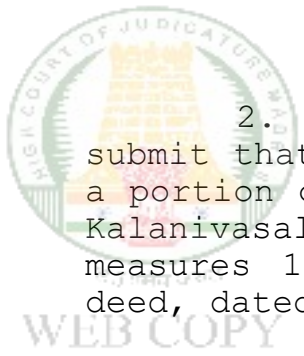
For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.VR.Shanmuganathan
Special Government Pleader

ORDER

(Order of the Court was made by **M. SATHYANARAYANAN, J.**)

The deponent of the affidavit is the Correspondent of the petitioner and according to him, his School, at present conducted classes for nursery and classes upto 5th standard in English medium and got its approval from the Educational Authorities right from the year 2004 and the Institution is being run for the past 15 years without any complaint whatsoever and had also having students



2. The learned Counsel appearing for the petitioner would submit that the construction of the school building was put up upon a portion of the land in Survey No.1098/1 (old Survey No.946/5), of Kalanivasal, Karaikudi, Sivagangai District and the extent of land measures 12 cents, which was purchased through a registered sale deed, dated 19.04.2007.

3. The learned Counsel appearing for the petitioner would submit that all of a sudden, the second respondent has issued a notice dated 11.03.2020 under Section 7 of the Land Encroachment Act 1905 (in short "Land Encroachment Act") stating that the land in Survey No.1098/1 is classified as "unassessed waste", which belongs to the Government and encroachment has been caused. The petitioner has submitted a detailed response, dated 04.03.2020 to the second respondent, who vide proceedings, dated 21.05.2020 in Na.Ka.No.A5/2137/2020, has rejected the same.

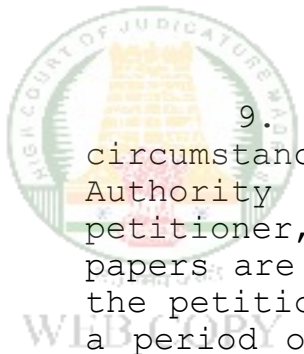
4. The learned Counsel appearing for the petitioner would submit that challenging the legality of the said notice, a statutory appeal, by invoking Section 10 of the Land Encroachment Act, 1905, has also been filed before the first respondent, along with the petition for stay and despite the entertainment of the appeal, no orders have been passed in the petition for stay and taking advantage of the same, the second respondent is threatening to recover the portion of the land, wherein the alleged encroachment is caused and to demolish the superstructure and hence prays for appropriate orders.

5. Mr.VR.Shanmuganathan, learned Special Government Pleader, accepts notice on behalf of the respondents and would submit that the second respondent - Tahsildar, after taking into consideration the relevant aspects, has rightly rejected the objections and it is for the petitioner to work out his remedy before the appellate Forum.

6. This Court considered the rival submissions and perused the materials placed before this Court.

7. The petitioner, challenging the proceedings of the second respondent, dated 21.05.2020, has invoked the appellate remedy under Section 10 of the Land Encroachment Act, by filing an appeal before the first respondent and pending disposal of the same also, prays for stay of further proceedings.

8. Once a statutory appeal is filed along with a petition for stay, the appellate Authority is to necessarily take up the petition for stay initially and give a disposal under one way or another in accordance with law and cannot keep the petition for stay for quiet long.



9. This Court, taking into consideration the facts and circumstances, directs the first respondent or the delegated Authority to entertain the statutory appeal preferred by the petitioner, dated 23.06.2020 along with a petition for stay, if the papers are otherwise in order and shall accord priority and take up the petition for stay initially and give disposal to the same within a period of two weeks from the date of receipt of a copy of this order and till disposal of the petition for stay, the second respondent shall defer further proceedings in terms of his order, dated 21.05.2020. It is also open to the first respondent - appellate Authority / delegated Authority to accord priority and give disposal to the appeal on merits and in accordance with law and pass appropriate orders as expeditiously as possible.

10. The Writ Petition stands disposed of accordingly. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

SSL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Collector,
Sivagangai District.

2.The Tahsildar,
Karaikudi Taluk, Sivagangai District.

+1 CC to M/s.G.PRABHURAJADURAI, Advocate(SR-13548[F]dated 03/08/2020)

W.P. (MD)No.8426 of 2020

and

W.M.P. (MD)No.7819 of 2020

31.07.2020

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