



WEB COPY

W.P(MD)No. 9579 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P (MD) No. 9579 of 2020

and

W.M.P. (MD) .No.8635 of 2020

S.Ramaraj

... Petitioner

Vs.

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Tahsildar,
Watrap Taluk,
Virudhunagar District.

3.The Block Development Officer,
Watrap Panchayat Union,
Virudhunagar District.

4.The Panchayat Board,
rep. By its President,
Maharajapuram Village Panchayat,
Watrap Taluk,
Virudhunagar District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus forbearing the respondents, their men agents, servants or any persons claiming through them, from removing any articles situated in the land comprised in S.No.239/2 in Maharajapuram Village, Watrap Taluk, Virudhunagar District till the disposal of the Suit in O.S.No.75/2019 on the file of the learned District Munsif, Srivilliputhur.

For Petitioner : Mr.V.Lakshmanan

For Respondents : Mr.M.Muthugeethaiyan
Special Govt. Pleader for R1 & R2

Mr.B.Bagavathi
Govt. Advocate for R3 & R4



ORDER

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

The petitioner would claim that the land in Sy.No.239/2, admeasuring to an extent of 1.99 cents situated in Maharajapuram Village, Watrap Taluk, Virudhunagar District absolutely belongs to him as well as his cousin brothers, in terms a registered partition deed dated 17.01.1964 and further according to him, the landed property in Sy.No.239/2 of Maharajapuram Village was initially possessed by his father Subban Chettiyar as well as his brothers and also classified as "Grama Natham Kudiyiruppu". One Karuppaiah, the petitioner as well as others had filed O.S.No.4 of 2009 on the file of the Court of Principal District Munsif, Srivilliputhur against the President of Maharajapuram Village Panchayat, the third respondent herein and also against one Jeyakumar praying for add interim injunction forbearing the defendants and their men from interfering with the peaceful possession and enjoyment of the registered property in Ward No.2 in Telungu Chettiyar Melatheru, Maharajapuram Village, Natham Kudiyiruppu and according to the petitioner, the said suit is pending. Thereafter, the petitioner and four others had also filed O.S.No.75 of 2019 against the official respondents as well as against Jeyakumar, Karuppiyah, Guruvammal and Mahendran on the file of the Principal District Munsif Court, Srivilliputhur praying for the relief of declaration that the suit property in Ward No.1 at Natham Sy.No.239/2 in Maharajapuram Village, admeasuring to an extent of east west 60 feet, south north 14 ½ feet belongs to him and also for consequential relief and the said suit is still pending without any interim order. It is also further brought to the knowledge of this Court that the earlier suit in O.S.No.4 of 2009 also came to be dismissed as withdrawn.

2. The learned counsel appearing for the petitioner would submit that in the suit in O.S.No.75/19, there are no interim orders in operation and he has drawn the attention of this Court to the order dated 20.09.2019, passed in W.P.(MD).No.20308 of 2019 filed by one Ramar against the official respondents as well as against this petitioner, in and by which, the petitioner therein had prayed for writ of mandamus directing the official respondents 1 to 4 to consider his representation dated 12.06.2019 and remove the obstruction and other encroached constructions put by the petitioner, who is arrayed as 5th respondent in the government land situated in S.No.239/2, Maharajapuram Village, Watrap Taluk, Virudhunagar District and a Division Bench of this Court has disposed of the said writ petition without ordering notice to the fifth respondent by directing the second respondent namely the Tahsildar, Watrap Taluk Office to consider and dispose of the said representation, after putting on notice the fifth respondent and



Ramar and also gave an incidental direction with regard to the pending suit in O.S.No.75 of 2019.

3. The primordial submission made by the learned counsel appearing for the petitioner by drawing the attention of this Court to the impugned proceedings of the third respondent dated 27.07.2020 is that even a cursory glance/perusal of the impugned order, it is clear that no opportunity whatsoever was afforded to the petitioner, despite such direction is given in the earlier order passed in the said writ petition and straight away, eviction order and consequential orders were passed and hence prays for interference of this Court.

4. Mr.M.Muthugeethaiyan, the learned Special Government Pleader, who accepts notice on behalf of the respondents 1 and 2 would submit that in compliance of the above said order, the second respondent issued necessary instructions to the third respondent to do the needful in accordance with law and accordingly, the third respondent initiated proceedings.

5. Mr.B.Bagavathi, the learned Government Advocate, who accepts notice on behalf of respondents 3 and 4, would submit that action has been taken in accordance with law and he has also drawn the attention of this Court to the written statement filed by the fourth respondent, wherein a specific denial has been taken as to the claim of the writ petitioner also in respect of the landed property in question.

6. This Court has carefully considered the rival submissions and also perused the materials placed on record.

7. At this juncture, it is relevant to extract hereunder paragraph No.6 of the order dated 20.09.2019, passed in W.P.(MD). No.20308 of 2019:

"In the light of the above, the writ petition is disposed of by directing the second respondent to consider the representation of the petitioner after issuing notice to the petitioner and fifth respondent and take action in accordance with law. Simultaneously, the fourth respondent shall file a written statement in the suit clearly pointing out as to nature of the land, its classification, etc., which shall be considered by the learned District Munsif, Srivilliputhur. The above direction be complied with within a period of eight weeks from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed."



8. It appears from the representation made by the learned Government Pleaders appearing for the respondents 1 to 3 that the second respondent had issued necessary instructions to the third respondent to do the needful and however, the third respondent had straight away issued the impugned proceedings as to the eviction of the petitioner from the property in question and also sought for police aid with a further direction to cut off the electricity connection.

9. From the perusal of the impugned proceedings passed by the third respondent, dated 27.07.2020, it is clear that it is not in consonance with paragraph No.6 of the order dated 20.09.2019, passed in W.P.(MD).No.20308 of 2019. Even otherwise, a duty/mandate is cast upon the official respondents to follow due process of law before ordering eviction and from the impugned proceedings, it appears that the same has not been done. If the second respondent/third respondent has any doubt as to the content or otherwise of the said order dated 20.09.2019 made in W.P.(MD).No.20308 of 2019, they would have approached the Government Pleader and got a clarification and admittedly, it has not been done. This Court also repeatedly comes across these kinds of orders passed by the official respondents, despite direction is given by this Court to follow due process of law and also by affording opportunity to the concerned persons against whom allegations of encroachment have been made. Therefore, this Court directs the first respondent to summon all the relevant records pertaining to the place in question and if there is any infraction in complying with the order of this Court, dated 20.09.2019 passed in W.P.(MD).No.20308 of 2019, immediate action would be taken against the respondents 2 and 3 in accordance with law.

10. It is also claimed by the petitioner that in respect of the landed property, he has put up only a temporary shed and it is open to the third respondent to cause inspection as to whether some permanent or other temporary constructions have been put up, without obtaining planning permission and if it is true, the third respondent is at liberty to take appropriate action strictly in accordance with law.

11. In the light of the above stated facts, this Writ Petition is disposed of and the impugned proceedings of the third respondent shall be treated as show cause notice, for which, the petitioner is given liberty to submit a detailed written representation along with authenticated documents to the third respondent within a period of two weeks from the date of receipt of a copy of this order. Upon receipt of the same, the third respondent is directed to consider and dispose of the said representation on merits and in accordance with law, within a further period of three weeks thereafter and communicate the decision to the concerned parties. Till such time, shall defer



There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

VS

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,
Virudhunagar District,
Virudhunagar.
- 2.The Tahsildar, Watrap Taluk,
Virudhunagar District.
- 3.The Block Development Officer,
Watrap Panchayat Union,
Virudhunagar District.
- 4.The President, Panchayat Board,
Maharajapuram Village Panchayat,
Watrap Taluk,
Virudhunagar District.

+1 CC to SGP (SR-14533[F] dated 20/08/2020)

W.P (MD)No. 9579 of 2020

and

W.M.P. (MD) .No.8635 of 2020

19.08.2020

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