



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P(MD)No. 9879 of 2020

and

W.M.P. (MD) .No.8852 and 8854 of 2020

Mr.T.Nagarajan

... Petitioner

Vs.

1.The Commissioner,
Madurai City Municipal Corporation,
Arignar Annamaligai,
Madurai-2.

2.The Assistant Commissioner,
South Zone No.IV,
Madurai City Municipal Corporation
Madurai-2.

... Respondents

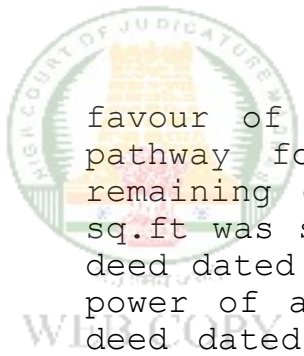
Prayer: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the respondents in Ma4A3/003685/2020 dated 10/08/2020 and quash the same and consequently direct the respondents not to disturb the petitioner of his peaceful possession of his property in T.S.No.100 with an extent of 650 square feet situates in Veerakaliamman Kovil Street, Jaihindpuram, Madurai - 11 in any manner whatsoever.

For Petitioner : Mr.P.Gunasekaran
For Respondents : Mr.T.S.Mohamed Mohideen

ORDER

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

The petitioner is a resident of Door No.262, Veerakaliamman Kovil Street, Jaihindpuram, Madurai-11. He is also a member of a political party namely CPI(M) (Communist Party of India-Marxist). It is the case of the petitioner that the property comprised in R.S.No.80/5, Town S.No.100 at Veerakaliamman Kovil Street originally had an extent of 2964 sq.ft and it was the self-acquired property of one S.Ramachandran and he sold his property in favour of one Maruthambal through a registered sale deed dated 04.07.1967 and after her demise, her legal heirs succeeded her estate. It is further averred by the petitioner that the three daughters of late Maruthambal had appointed one M.Rajeswaran to deal with the said property and he, in turn, executed a gift deed dated 04.02.2004 in



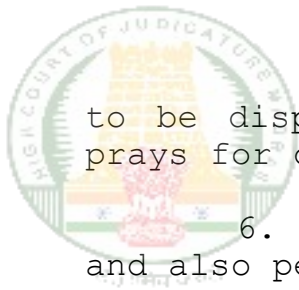
favour of the respondents gifting nearly 1604 sq.ft as a common pathway for the benefit of common public and insofar as the remaining extent of the property was concerned, an extent of 800 sq.ft was sold in favour of one K.Shanthi through a registered sale deed dated 04.02.2004 and yet another 560 sq.ft was sold out by the power of attorney in favour of one R.Chitra by a registered sale deed dated 04.02.2004 and both of them were in possession of the property and the above said two persons had jointly executed a registered power of attorney deed dated 13.11.2013 appointing one B.Vasudevan for the purpose of conveying the property and out of 1360 sq.ft, the petitioner had purchased an extent of 650 sq.ft through a registered sale deed dated 04.09.2015 and after purchase, he raised a tin roofed shed in the said property and used it as a car shed.

2. The petitioner also submitted that he is a practicing lawyer and he is also doing social works and also exposing the policies and principles of the political party, in which, he is a member.

3. The grievance expressed by the petitioner is that the second respondent, on a total misconception of facts and without looking into the schedule of property given in the gift deed dated 04.02.2004, has issued the impugned notice, as if the petitioner had encroached upon Town S.No.100, Block No.37 and making a challenge to the same, he has filed the present writ petition.

4. The learned counsel appearing for the petitioner has drawn the attention of the Court to the parent title deeds pertains to the petitioner's property and would submit that the petitioner, apart from the land purchased by him through the registered sale deed dated 04.09.2015, has not encroached upon even an inch of land and also drawn the attention of the Court to the photographs exhibited at page Nos.67 and 68 of the typed set of papers and the photocopy of the documents and would submit that admittedly, on account of the encroachments caused by the residents of that locality in the form of temporary sheds and projections, the width of the street also narrowed down and for the reasons other than genuine, the impugned notice came to be issued by the second respondent and hence, prays for interference.

5. Per contra, Mr.T.S.Mohamed Mohideen, learned counsel, who accepts notice on behalf of the respondents would submit that the second respondent, being the local authority, had taken into consideration all the allegations made against the petitioner and taking into consideration the facts and circumstances, a fair decision has been taken to remove the encroachment in the form of tin roofed shed put up by the petitioner and it cannot be faulted with. It is the further submission of the learned counsel appearing for the respondents that for grant of patta, the petitioner had also applied to the jurisdictional District Revenue Officer and it is yet



to be disposed of, and in the light of the submissions made, he prays for dismissal of the writ petition.

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

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7. A perusal of the materials placed in the typed set of documents, prima facie discloses that a gift deed dated 04.02.2004 was executed by one Rajeswaran in favour of the Commissioner of Corporation, Madurai City Municipal Corporation, Madurai-2 and the schedule of the property would disclose among other things that an total extent of 1604 sq.ft of land has been gifted in favour of the first respondent and the balance land available is 1360 sq.ft and out of which, two persons had purchased to an extent of 800 and 560 sq.ft respectively and they jointly executed a registered power of attorney deed dated 13.11.2013, in favour of one B.Vasudevan, from whom the petitioner had purchased an extent of 650 sq.ft by a registered sale deed dated 04.09.2015.

8. In the light of the stand taken by the petitioner in the affidavit filed in support of the writ petition coupled with the supporting documents, this Court directs the second respondent to treat the impugned notice dated 10.08.2020 as a show-cause notice, for which, the petitioner is at liberty to submit a detailed response by enclosing all the relevant and authenticated documents, within a period of four weeks from the date of receipt of a copy of this order and the second respondent, upon receipt of the same, shall afford an opportunity of personal hearing to the petitioner and thereafter, consider the same, on merits and in accordance with law, and pass appropriate orders, within a period of six weeks thereafter and communicate the decision taken to the petitioner. Till such time, the respondents 1 & 2 shall defer further proceedings in terms of the impugned notice dated 10.08.2020, issued by the second respondent. It is also made clear that the petitioner, till the disposal of the representation by the second respondent, shall not create any third party right in respect of the property in question.

9. The Writ Petition is disposed of accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

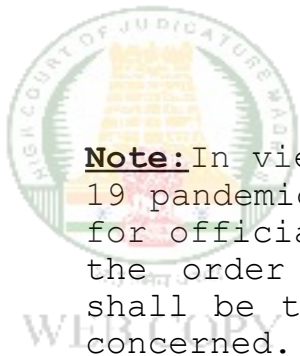
Sd/-

Assistant Registrar (Crl.Side)

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Sub Assistant Registrar(CS)



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 Commissioner,
Madurai City Municipal Corporation,
Arignar Annamaligai,
Madurai-2.

2.The Assistant Commissioner,
South Zone No.IV,
Madurai City Municipal Corporation
Madurai-2.

+1 CC to M/s.T.S. MOHAMED MOHIDHEEN, Advocate (SR-
14842[F] dated 25/08/2020)

W.P (MD) No. 9879 of 2020

and

W.M.P. (MD) .Nos.8852 and 8854 of 2020

24.08.2020

AP (02/09/2020) 4P 4C