



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2020

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

WEB COPY

W.P. (MD) No.16969 of 2020
and
W.M.P. (MD) No.14191 of 2020

P.Gunasekaran

...Petitioner

-Vs-

- 1.The District Collector,
O/o the District Collector,
Theni, Theni District.
- 2.The Tahsildar,
O/o of the Tahsildar,
Andipatti Taluk,
Theni District.
- 3.The Block Development Officer (BDO),
O/o of the Block Development Officer,
Mayiladumparai,
Theni District.
- 4.The Village President,
Mayiladumparai,
Theni District.
- 5.The Village Administrative Officer (VAO),
O/o the Village Administrative Officer,
Kadamaligundu,
Theni District.

...Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a writ of Mandamus, to direct the first respondent to instruct the second respondent for issuing correct Survey number to the petitioner's land in the meanwhile the respondents should not disturb the petitioner from his land in S.No.1136/5 situated at Mayiladumparai Village, Theni District on the basis of the representation dated 18.09.2020.

For Petitioner	: Mr.K.Kevinkaran
For R1 and R2	: Mr.P.Kannidevan Additional Government Pleader.
For R3 and R4	: M.Murugan Government Advocate



ORDER

This writ petition has been filed to direct the first respondent to instruct the second respondent to issue correct Survey number to the petitioner's land and in the meanwhile not to disturb the petitioner from his possession and enjoyment of his land in S.No.1136 of 5 situated at Mayiladumparai Village, Theni District on the basis of the representation dated 18.09.2020.

2. Mr.P.Kannidevan, learned Additional Government Pleader, accepts notice for the first and second respondents and Mr.M.Murugan, learned Government Advocate, accepts notice for the third and fourth respondent.

3. By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

4. The property in question was originally purchased by the father of the petitioner. They were in possession and enjoyment of the property since the date of purchase of the land by his father. The Government authorities also assigned Survey No.1136/1 to the said land. The petitioner had also sold a portion of the property to the fourth respondent. When the petitioner started to build a house in his land, the Government officials prevented the same as if the land in question is the Government land. Though the petitioner had submitted necessary documents to show that the land belongs to his family, the authorities stated that survey number was wrongly assigned and ordered to vacate the premises. In such circumstances, the petitioner had given a representation dated 18.09.2020 to the respondents for obtaining correct survey number for the above said land. Since no efficacious action has been taken, the petitioner is before this Court by filing the present writ petition.

5. The learned Additional Government Pleader appearing on behalf of the respondents 1 and 2 would contend that the petitioner is an encroacher and he is not entitled for grant of patta.

6. The petitioner submitted that he was sanctioned with a plan based on which, he has constructed a house. The property was purchased by the father of the petitioner way back in the year 1984. Since there is a diverging view, this Court is not inclined to grant the relief as such sought for by the petitioner.

7. It is open to the respondents concerned to verify the fact based on the sanctioned layout and ascertain as to whether the land belongs to the Government or not. Now a days, OSR, water bodies are registered dubiously with the consent of the Government Officials and this may be one of the case, where the document would have been registered and based on the document, plan would have been sanctioned.



8. In a similar case, the Court issued a direction that whenever a plan for sanction is filed before the appropriate authority, they will have to verify the document including the layout from the Sub Registrar Office and older document got to be registered by the Plan Sanctioning Authority. Unless and otherwise, strict norms are not followed, certainly, there is a possibility of construction of unauthorized building based on the created document, which appears to be authenticated.

9. In the case of T.S. Senthil Kumar vs. The Government of Tamil Nadu and another, it has been held that the State holds all the water bodies in public trust for the welfare of this generation and all the succeeding generations and, therefore, protecting water bodies must be given as much weightage, if not more as allowing house-sites or other buildings to come up on such tanks or tank poramboke lands, and water charged lands.

10. Admittedly, at the best efforts of the Government, several citizens have escaped from Nivar cyclone. But the Government must be strict and vigilant on the officials of the Revenue Department, Corporation and other authorities, who are dealing with the appeal under section 80-A of the Act and who are trying to misuse the position of registering document for the land, which belongs to the Government. The Hon'ble Division Bench of this Court in W.P.No.13648 of 2016 dated 29.04.2019, in which I was a party, has held that in case, there is an encroachment established, the electricity charges will have to be paid by the petitioner five times more than the actual commercial value.

11. In the result, this writ petition is disposed of. No costs. consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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

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O/o the District Collector,
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+lcc to Mr.K.Kevinkaran Advocate Sr.No. 7758

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VB (11.01.2021) 4P 7C