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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2020

CORAM :

**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and**

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A. (MD) .No.97 of 2018

and

C.M.P. (MD) .No.513 of 2018

S.Asak Basha

... Appellant / Third Party

Vs.

1.Abbas

... 1st Respondent / Writ Petitioner

2.The Commissioner,
Trichy Municipal Corporation,
Trichy.

3.The Assistant Commissioner,
Ariyamangalam Ward,
Trichy Municipal Corporation,
Trichy.

... Respondents 2 & 3 / Respondents 1 & 2

Prayer: The Writ Appeal is filed under Clause 15 of Letters Patent against the order passed by this Court in W.P.(MD).No.17322 of 2017, dated 21.09.2017.

Prayer in WP(MD). 17322/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus directing the respondents herein to provide the water connection in respect of petitioners house property situated at Door (*)No.33 Muslim Street, Periyapalayam, Varaganeri, Trichy on the basis of petitioner representation dated 12.07.2017 and within the time stipulated by this Honble Court. (*)Prayer amended vide Court Order dt.23/11/17 in WMP (MD) 16359/17)

For Appellant : Mr.J.Anandkumar

For R1 : Mr.Gangai Amaran for
Mr.K.M.Karunakaran

For R2 & R3 : Mr.N.S.Karthikeyan
Standing counsel

**J U D G M E N T**

(Judgment of the Court was delivered by **M. SATHYANARAYANAN, J.**)

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The appellant is the third party and after obtaining leave, he has filed the writ appeal, aggrieved by the order dated 21.09.2017, made in W.P.(MD).No.17322 of 2017, filed by the first respondent.

2. The first respondent has filed the said writ petition stating among other things that he is the absolute owner of the property comprised in Door No.33, Muslim Street, Periyapalayam, Varaganeri, Trichy and it was gifted to him by way of registered gift deed dated 21.12.2010 and ever since the date of execution of the gift deed, he is in possession and enjoyment of the said property as the absolute owner. It is further averred by the first respondent that though the said property was provided with water connection, it was disconnected due to latches and lapses on the part of the previous occupants and after the gift deed was executed, he filed necessary application along with necessary charges on 12.07.2017 and despite that, nothing has been done and hence, he came forward to file the writ petition.

3. The learned single Judge, after taking note of the submissions of the learned counsel appearing for the respondents that if the writ petitioner pays the entire arrears, the same would be accepted by the authorities and thereafter, the authorities would provide water connection to the petitioner's house within a stipulated time, disposed of the writ petition accordingly vide order dated 21.09.2017 and challenging the same, the present writ appeal is filed by the third party, after obtaining leave from this Court.

4. The learned counsel appearing for the appellant would submit that the first respondent / writ petitioner has filed a comprehensive suit in O.S.No.401 of 2016 on the file of the District Munsif Court, Tiruchirapalli against Gerina, the appellant herein and the Sub Registrar, Joint 1 and 2 Sub Registration Office, Trichy, praying for declaration to declare the sale deed bearing Document Nos.1580/2011, dated 02.03.2011 and 7772/2014, dated 24.12.2014, respectively as *null and void*, permanent injunction restraining the defendants 1 and 2 not to alienate and further encumber the suit property and also restraining the defendants 1 and 2 from interfering with the peaceful possession and enjoyment of the suit property and also award of cost of the suit.

5. The primordial submission of the learned counsel for the appellant that admittedly the property in which the first respondent / writ petitioner seeks water connection, has been shown as Item Nos.1 and 2 in the plaint schedule and filing of the said suit has been deliberately burked in the affidavit filed in support of the



writ petition and he would further submit that unless and until the first respondent / writ petitioner as the plaintiff, succeeds in the suit filed by him, he cannot claim that he is the absolute owner of the property and as such, he is not entitled to get water connection and prays for allowing of the writ appeal.

6. Per contra, the learned counsel for the first respondent would submit that the water is a basic amenity and since the petitioner is a resident of the property and he got every right to get a water connection and the application along with the necessary charges, despite being made, the respondents had failed to provide any water connection and therefore, the writ petition was filed and the learned single Judge, after taking into consideration the relevant factors, has rightly allowed the writ petition and prays for dismissal of the writ appeal.

7. The learned Standing counsel appearing for the respondents 1 and 2 would submit that the water connection is yet to be provided and they will abide by any orders to be passed in the writ appeal.

8. This Court has carefully considered the rival submissions and also perused the materials placed before this Court.

9. It is a well settled position of law that a person / litigant, expected to approach this Court with clean hands and in the case on hand, as rightly pointed out by the learned counsel for the appellant, the first respondent / writ petitioner has deliberately burked / suppressed the filing of the comprehensive civil suit in O.S.No.401 of 2016 on the file of the District Munsif Court, Tiruchirapalli. In the considered opinion of the Court, the pendency of the civil suit may have a bearing on the request made by the first respondent / writ petitioner seeking water / sewage connection and for the reasons best known to him, he failed to disclose the said material. Though the first respondent / writ petitioner in Paragraph No.2 of the affidavit filed in support of the writ petition claims that he is the absolute owner of the property, unless and until he gets declaratory relief in the said pending suit, he cannot make such an averment.

10. In the light of the above facts and circumstances, the impugned order disposing of the writ petition with some direction, is to be set aside. In the result, the Writ Appeal is allowed and the impugned order dated 21.09.2017 made in W.P.(MD).No.17322 of 2017 is set aside and consequently, the Writ Petition is dismissed. No costs.

11. Since the petitioner is deliberately burked the finding of the suit and made the Court to pass some positive orders in his favour, this Court is inclined to impose cost. Accordingly, the first respondent / writ petitioner is directed to pay a cost of <https://hcservices.ecourts.gov.in/hcservices/> RS.15,000/- (Rupees Fifteen Thousand only) payable to the Additional Registrar General (in-charge)/ Registrar (Judicial) for purchasing



necessary equipments for use in dispensary etc.; within a period of four weeks from the date of receipt of a copy of this order.

12. For reporting compliance, post the matter on 01.09.2020.

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Sd/-

Deputy Registrar (Accounts)

// True Copy //

/ /2020

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,
Trichy Municipal Corporation, Trichy.
- 2.The Assistant Commissioner,
Ariyamangalam Ward,
Trichy Municipal Corporation, Trichy.
- 3.The Additional Registrar General / Registrar (Judicial)
Madurai Bench of Madras High Court, Madurai.
- 4.The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court, Madurai.
(for Reporting Compliance on 01.09.2020)

W.A. (MD) .No.97 of 2018

and

C.M.P. (MD) .No.513 of 2018

28.07.2020