BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).No.18802 of 2014

R.Arumainathan .. Petitioner

Vs.

1.The Commissioner,
Dindigul Corporation,
Dindigul.

2.D.Joseph Raj .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the 1st respondent in Na.Ka.No.9747/2010/A11, dated 01.02.2011 and Na.Ka.No.4162/2014/A6, dated 10.06.2014 issued to the petitioner and quash the same as illegal and consequently directing the 1st respondent to receive property tax bearing No.45430 from the petitioner from the year 2014-2015 onwards and restore the water connection in No.79084 to the petitioner's dwelling house situated at Door No.75D/15, Thirumalaisamypuram, Nagal Nagar, Dindigul, within a time frame that may be stipulated by this Court.

(Prayer is amended vide Court order, dated 16.12.2019 in W.M.P.(MD).No.5322 of 2018 in W.P.(MD).No.18802/2014)

For Petitioner : Mr.C.Abulkalam Azad
For Respondents : Mr.J.Lawrance for R1
Mr.N.Anandakumar for R2

ORDER

This writ petition has been filed by the petitioner for issuing Writ of Certiorarified Mandamus, to quash the impugned order of the 1st respondent in Na.Ka.No.9747/2010/A11, dated 01.02.2011 and Na.Ka.No.4162/2014/A6, dated 10.06.2014 issued to the petitioner and consequently direct the 1st respondent to receive property tax bearing No.45430 from the petitioner from the year 2014-2015 onwards and restore the water connection in No.79084 to the petitioner's dwelling house situated at Door No.75D/15, Thirumalaisamypuram, Nagal Nagar, Dindigul, within a time frame that may be stipulated by this Court.

2.The case of the petitioner is that his mother by name Selvi @ Vijayakumari is the absolute owner of the house property in T.S.No.1628/2A with an extent of 718 sq. feet. The petitioner states that his mother executed a settlement deed in his favour in respect of the house property on 04.12.2009 and that he is in possession as an absolute owner. It is not in dispute that the first respondent gave water connection (Ward No.79084) and collected property tax and water charges which were then standing in the name of petitioner's mother. It is also admitted that after the settlement deed executed by the petitioner's mother in his favour the property tax assessment and the water charges were changed in the name of petitioner. While so, the first respondent issued a notice, dated 13.07.2010, stating that the second respondent is claiming title to the house property of the petitioner and that therefore, the petitioner should produce documents within seven days. It is also contended by the petitioner that the first respondent received the water charges up to the year 2013-2014, but without any notice, disconnected the water supply line. Despite the petitioner requested the first respondent to restore the water connection, the first respondent sent a notice directing the petitioner to produce documents on 12.09.2013.

3.It is the case of the petitioner that the first respondent thereafter, issued notice one after another to produce documents, despite the petitioner appeared before the first respondent and produced all documents to prove his title and enjoyment. Therefore, the petitioner approached this Court originally to restore the service connection and thereafter the prayer was amended seeking relief to direct the first respondent to receive the property tax from the petitioner for dwelling house. Though the second respondent is represented by a learned counsel, he has not filed any counter. However, the first respondent has filed a counter *interelia* pointing out that the second respondent is claiming title to a small portion of the property in which the petitioner has his residence. The first respondent further states that the petitioner has put up construction encroaching into a property which was used as a public pathway. The contention of the first respondent is not on the basis of the representation given by the second respondent to the first respondent or any materials collected thereafter. It is the positive case of the first respondent that the writ petitioner constructed the house on the property of the respondent. Therefore, the first respondent passed an order on 10.06.2014 cancelling the assessment of property tax in relation to the disputed property. Since the cancellation of property tax assessment is not independently challenged, the learned counsel for the first respondent further contended that the amended prayer seeking a direction to assess the property in the name of petitioner is not sustainable.

4.This Court has considered the rival submissions of counsels on either side. The fact that the petitioner is in possession and enjoyment of the property and that he has put up a small residential house for his living is not in dispute. The case of the first respondent is that the petitioner has encroached into a portion of property which vested with Municipal Corporation namely a public pathway, and the second respondent also states that the construction is also by encroaching into his property. If the property of second respondent is encroached, it is for the second respondent to approach the civil court for appropriate relief. However, if the contention that the residential house has been constructed by encroaching into any portion of public road or public pathway, it is open to the first respondent to take appropriate action in the manner known to law as per the provisions of Act applicable to the Dindigul Corporation.

5.Similarly, the first respondent cannot deprive itself the property tax for any building even assuming that the petitioner has encroached into any portion of public pathway or a property which is used by the public as a public property. The collection of property tax or giving water connection to the said house cannot be treated as acknowledgment of petitioner's title or absolute right over the property, unless the petitioner has been recognised as the owner while collecting property tax from the petitioner till 2013-2014. The water connection was disconnected only at the request of second respondent. No materials are produced before this Court to show how the pathway is in existence and the encroachment. However, if it is a public street, it is always open to the first respondent to remove any encroachment into any portion of public street by taken action under the provisions of Corporation Act. Even though, it is not part of street, but vest with Corporation, the same can be treated as a public property to take action under the provisions of Tamilnadu Public Premises Eviction of Unauthorized Occupants Act. However, till such time, the petitioner is evicted by process known to law, the first respondent cannot be permitted to disconnect water connection or refuse to assess the property in the name of petitioner, merely because the petitioner's neighbour or brother has given a complaint and produced records before the first respondent to convince the first respondent about ownership. The question of title cannot be decided by the first respondent.

6.Hence, this Court is of the view that the petitioner can be given relief without prejudice to the rights of the first respondent to proceed to initiate proceedings for removal of encroachment in case the petitioner is found in possession or encroached into any portion of public street or the property vested with the Corporation by following procedure contemplated under the Corporation Act or the Tamilnadu Public Premises Eviction of Un-authorized Occupants Act. This order shall not stand in the way of second respondent to file a suit for recovery of possession if the petitioner is in possession of property owned by the second respondent.

7.The learned counsel appearing for the first respondent submitted that the second respondent is also in encroachment of small portion of land which is public pathway along with the petitioner. It is open to the first respondent to initiate appropriate action as directed above as against the second respondent also.

8.The first respondent is directed to restore water connection and collect property tax from the petitioner without prejudice to the rights reserved to the first respondent in this writ petitioner as directed above. The restoration of water connection shall be done within a period of two weeks from the date of receipt of a copy of this order.

9.With the above directions, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

TM

TO

The Commissioner,
Dindigul Corporation,
Dindigul.

+1 CC to MR.C.ABUL KALAM AZAD, Advocate (SR-744[F] dated 08/01/2020)

+1 CC to MR.V.MALAIYENDRAN, Advocate (SR-877[F] dated 08/01/2020)

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