



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.03.2020
CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD)No.14629 of 2018

and

W.M.P.(MD)Nos.13181 of 2018 and 1080 of 2020

Soundara Selvi : Petitioner
Vs.

1.The Revenue Divisional Officer,
Tiruchendur,
Tuticorin District.

2.The Executive Officer,
Tiruchendur Special Grade Town Panchayat,
Tiruchendur, Tuticorin District.

Veera S.C.Soundarapandian (Died)

3.V.M.Sivalingam
Secretary.
Keela Eral Nadar Uravinmurai Sangam,
Dharma Fund, No.532, T.H.Road,
Tondiarpet, Chennai - 600 081. : Respondents

(R3 was substituted vide order of this Court, dated 09.01.2022 vide W.M.P.(MD)No.19435 of 2019)

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the entire records in connection with the impugned order passed by the second respondent in Na.Ka.No.97/2016/A1, dated 29.05.2018 and quash the same as illegal.

For Petitioner : Mr.D.Anbarasu

For R1 and R2 : Mr.VR.Shanmuganathan
Special Government Pleader

For R3 : Mr.N.Mala



ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

This Writ Petition is filed for issuing a Writ of Certiorari to quash the impugned order passed by the second respondent, dated 29.05.2018.

2.The petitioner states that she acquired the property in S.No.1513/9 and put up a construction. However, the contesting respondent, namely, the third respondent states that the property claimed by the petitioner in S.No.1513/9 is disputed and that the property in S.No.1513/12 is the subject matter of the dispute. The petitioner has obtained planning permission in respect of S.No.1513/9. However, the third respondent contends that the building has been wrongly constructed in S.No.1513/12. It is in these circumstances, the third respondent has earlier filed a Writ Petition in W.P.(MD)No.2628 of 2018 for issuing a Writ of Mandamus to direct the revenue officials and the Executive Officer of the Tiruchendur Special Grade Town Panchayat, to remove the unauthorised construction put up by the fourth respondent / petitioner herein to an extent of 1½ cents in the petitioner's land in S.No.1513/12. This Court, while disposing the Writ Petition, has passed the following order:

"However, if there is any unauthorized construction or illegal construction put up by the fourth respondent in the property comprised in S.No.1513/12, the third respondent is directed to issue notice to both the petitioner as well as the fourth respondent and decided about the nature of construction whether it is authorized or unauthorized. It is made clear that the official respondents shall not embark upon deciding the title or possession of the property either in S.No.1513/12 and 1513/9. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order."

3.Pursuant to the direction of this Court, the second respondent conducted a survey through revenue officials and found that the construction has been partly put up in S.No.1513/12. Based on the conclusion that the portion of the building is located in S.No.1513/12, the second respondent called upon the petitioner to remove the construction within twelve weeks, vide impugned order. It is further stated in the impugned order that in case of failure, the second respondent will take action in terms of the provision of Tamil Nadu District Municipalities Act, for removal of encroachments.



4.The official respondents have no authority to remove the encroachment in private land, even if one has encroached into the property of another person. The power vested with the local body is confined to the property vest with local body in terms of the provision of the Tamil Nadu District Municipalities Act. Therefore, the impugned order is without jurisdiction. Hence, the impugned order, dated 29.05.2018 is set aside. It is open to the parties to approach the Civil Court for appropriate relief in the manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Cmr

To

The Revenue Divisional Officer,
Tiruchendur,
Tuticorin District.

+1 CC to SPL.GP (SR-11583[F] dated 13/03/2020)
+1 CC to M/s.N.MALA, Advocate (SR-11531[F] dated 13/03/2020)
+1 CC to M/s.D.ANBARASU, Advocate (SR-11843[F] dated 16/03/2020)

W.P(MD)No.14629 of 2018
12.03.2020

MK (15.05.2020) 3P 5C