



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No. 11571 of 2012

&

M.P.No.1 of 2012

M. Rajagopalan

.. Petitioner

Versus

1.The District Collector
District Collector Office
Salem.

2.The Tahsildar,
Mettur Taluk,
Salem District.

3.The Communist Party of India,
(Marxist),
represented by its Salem District
Secretary Tangavel,
Door No.P.R.Ninaivagam,
Vidyalaya Road, near Ramakrishna Park,
Salem District.

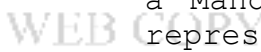
4.The Communist Party of India (Marxist)
represented by its Salem District
Union Secretary M. Vetrivel
No.3/2-60B, Perumal Koil Street
Kunjandiyur, Salem District.

.. Respondents

Writ Petition filed under Section 226 of Constitution of India praying for issuance of Writ of Mandamus directing the 1st and 2nd respondents to consider the petitioner's representation dated 16.3.2012

For Petitioner : Mr. A. Erusalam

For Respondents : Mr. Stalin Abhimanyu,
Govt. Advocate
for R1 and R2.
Mr.M.Christopher for R3 and R4



O R D E R

The petitioner has filed this Writ Petition seeking to issue a Mandamus directing the respondents 1 and 2 to consider his representation dated 16.3.2012.

2. According to the petitioner, he owns the lands measuring 3 ½ cents in Survey No.216/12, Old No.32/V in Veerakkalpudur village, Mettur, Salem and he has been in possession and enjoyment of the same since 1981 to till date by paying property tax, electricity charge and water tax. In the year 1998, the petitioner was appointed as District Secretary in the Marxist Communist party for Kolatur Union Committee, pursuant to which, the petitioner used one portion of his building premises as Marxist Communist party office for the said committee. After suspension of petitioner from the post of District Committee, he asked the Union Committee Secretary Mr.Vetrivel to vacate the said portion, but instead of vacating the office premises, the said vetrivel along with one P.Thangavelu, the then District Secretary of the Party, threatened the petitioner to sell the entire property to the District Secretary of the Party, otherwise, they will seize his building and also will evict the tenants therefrom. Having regard to the same, the petitioner lodged a complaint before Deputy Superintendent of Police, Mettur on 10.2.2012, but suddenly on 11.2.2012, the Union Secretary, Mettur, Kolathur along with 30 unidentified persons broke open the lock and attempted to encroach petitioner's building. Having regard to the same, the petitioner filed O.S.No.31 of 2012 and I.A.No.123 of 2012 for declaration which is pending in Sub Court, Mettur. Pending suit, the petitioner also sent a representation on 16.3.2012 followed by reminder dated 17.3.2012 to the 1st respondent to intervene in the matter and to remove the encroachment in petitioner's property, however, the same is kept pending till date without any consideration by the 1st respondent. Hence the writ petition.

3. Refuting the averments made in the writ petition, the 2nd respondent has filed a counter, wherein, in para 10, it was stated as follows;

" 10. The averments contained in the para 10 are presented in merits of the petitioner, since this respondent is not a party in the case O.S.No.32 of 2012 in I.A.123 of 2012, the respondents does not aware of the case pending in the Sub Court , Mettur. This respondent did not try to evict the petitioner from the suit building."



4. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents. It is evident that there are disputed questions involved in this writ petition and they cannot be adjudicated by this Court in exercise of power under Article 226 of The Constitution of India. The petitioner has also filed a civil suit in O.S. No. 31 of 2012 before the Sub Court, Mettur for declaration of his title to the property. While so, issuing a Mandamus to the respondents 1 and 2 to consider the claim of the petitioner will not arise. In view of the above, leaving it open to the petitioner to seek appropriate remedy in the manner known to law before the competent Civil Court, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

msr/rsh

To

1. The District Collector,
District Collector Office,
Salem.
2. The Tahsildar,
Mettur Taluk,
Salem District.

+1cc to the Government Pleader SR No.32934

WP No. 11571 of 2012

NR (CO)
PR (24/08/2021)