

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2021

CORAM:

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.15873 of 2013

R.Sankar,
S/o.Ramakrishnan

... Petitioner

Vs

1. The District Collector,
Krishnagiri, Krishnagiri District.

2. The District Revenue Officer,
Krishnagiri, Krishnagiri District.

3. The Sub-Collector,
Hosur, Krishnagiri District.

4. The Thasildar,
Hosur Taluk, Krishnagiri District.

5. The Commissioner,
Hosur Municipality,
Hosur, Krishnagiri District.

6. S.Prakash,
S/o.Sri Ramaiah

... Respondents

(R6 impleaded as per order dated 05.09.2013
in MP.No.1/2013 in WP.No.15873/2013)

Prayer: Writ Petition filed under Article 226 of the
Constitution of India to issue a Writ of Mandamus, directing the
5th respondent to implement the order passed by him in
Na.Ka.No.9774/2012/F1 dated 24.01.2013 in specific time frame.

For Petitioner : Mr.G.K.Sekar
For R1 to R4 : Mr.N.Inbanathan
Additional Government Pleader
For R5 : Ms.S.Thankira
For R6 : Mr.Rathina Asohan

ORDER

Though this Writ Petition has been filed by the petitioner to direct the 5th respondent to implement the order passed by him in Na.Ka.No.9774/2012/F1 dated 24.01.2013, it is noticed that no order has been passed on 24.01.2013. It is merely a notice issued by the 5th respondent to the 6th respondent pursuant to a complaint given by one Mr.S.Sundaram.

2. This Writ Petition has been filed by the petitioner suppressing the fact that a subsequent communication dated 16.04.2013 had been served on him based on the complaint given by him and the representation of the 6th respondent on 14.02.2013, wherein, it has been explained that the 6th respondent had produced records to establish that the land in question was a private property of the 6th respondent and five others and therefore, the action that was earlier proposed to be taken vide letter dated 24.01.2013 was not being proceeded further and if the petitioner wanted any relief in respect of the same, he should approach the Court.

3. By an order dated 11.09.2020, this Court called upon the 5th respondent to explain as to how the order dated 24.01.2013 (actually notice) was sought to be withdrawn based on the submission of the 6th respondent herein and therefore, directed the 5th respondent to appear through video conferencing on the next date of hearing. This case was thereafter listed on 05.10.2020. The 5th respondent has filed an additional affidavit, wherein it has been explained as under:-

"4. I submit that a letter has been sent to the Commissioner of Municipal Administration Chennai for cancellation of this Office Notice dated 24.01.2013 issued to the petitioner, vide this Office letter in Na.Ka.No.9774/2012/F1 dated 14/10/2020 and the same is pending. The Notice dated 24/01/2013 and 16/04/2013 has been issued by the Commissioner of Hosur Municipality as an oversight caused due to the report given by the then Town Surveyor and neither done willfully nor wantonly. Then town Surveyor was retired on 30.09.2016. I plead unconditional apologies on behalf of the then Commissioner of Hosur Municipality and assure that all steps will be taken to adhere with the appropriate provisions of law in future."

4. In the said counter affidavit, it is further stated that based on the representation of one Mr.S.Sundaram dated 22.03.2013, the Special Tahsildar, Town Survey Settlement Office, Hosur had recommended to the Assistant Settlement Officer (South), Survey and Settlement Office, Chennai to cancel the joint patta issued for the property in Town Survey No.165, in Ward 'D', Block 19 and to transfer the same to the name of Hosur Municipality as a public pathway after recording the statement of the 6th respondent and other joint patta holders of the said property and also based on the statement of the petitioner that he is unable to open his windows due to the car shed put up by the 6th respondent and that in future if any dispute between the joint pattadars, it would be difficult to remove the shed in Town Survey No.165 and the issue regarding the same is pending.

5. The copy of the intimation/communication dated 16.04.2013 has also been filed by the 5th respondent before this Court. The said intimation/communication has been issued by the 5th respondent to the petitioner pursuant to the representation of the petitioner, wherein it has been stated that the land in question does not belong to the Municipality and therefore, the encroachment cannot be removed by the 5th respondent.

6. There are disputed questions of facts arising out of the present Writ Petition. The Writ Petition was predicated on the assumption that an order was passed on 24.01.2013, when indeed it was only a notice issued pursuant to the complaint filed by one Sundaram against the 6th respondent. The 5th respondent has come to a conclusion vide a intimation/communication dated 16.04.2013 that there was no necessity to proceed further with the notice dated 24.01.2013.

7. The 5th respondent has also given an unconditional apology on behalf of the then Commissioner of Hosur Municipality for errors committed by him and has assured that all steps will be taken to adhere with the appropriate provisions of law in future. I therefore direct the 5th respondent to conduct the fresh enquiry after hearing both the petitioner and the 6th respondent and pass appropriate orders, within a period of three months from the date of receipt of a copy of this order and take steps in accordance with law.

8. Accordingly, this Writ Petition stands disposed of. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

arb

To

1. The District Collector,
Krishnagiri, Krishnagiri District.
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Hosur, Krishnagiri District.

+1 cc to Mr.G.K.Sekar Advocate sr4502

+1 cc to the Government Pleader sr 4589

W.P.No.15873 of 2013

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