

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

WP.NO.4653 OF 2021 & WMP.NO.5278 OF 2021

A.Ramasamy

.. Petitioner

Versus

1. The District Collector
Namakkal District, Namakkal.
2. The Revenue Divisional Officer
Tiruchengode, Namakkal District.
3. The Tahsildar
Tiruchengode Taluk, Namakkal District.
4. The Panchayat President
Molasi Village Panchayat,
Moalsi, Tiruchengode Taluk
Namakkal District.
5. V.Rajan

.. Respondents

Prayer:-

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents 3 to 5 to construct the house for the petitioner in S.No.373/13, Molasi Village, Tiruchengode Taluk, Namakkal District at their cost at earliest point of time.

For Petitioner : Mr.C.Prakasam

For RR1 to 4 : Mr.R.Vijayakumar
Additional Government Pleader

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

(1)By consent, the writ petition is taken up for final disposal and is disposed of by this order.

- (2) Mr. R. Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the respondents 1 to 3.
- (3) The petitioner and his wife filed OS.No.168/2020 on the file of the Court of Additional District Munsif at Tiruchengode against respondents 1 to 3 herein as well as against the Village Administrative Officer of Molasi Village, praying for declaration, declaring that they are the absolute owners of the suit property admeasuring to an extent of 0.0584.0 sq.m., comprised in Old S.No.62/1 Natham S.No.373/13, Molasi Village, Tiruchengode Taluk, Namakkal District as well as the superstructure put up on the said land bearing Door No.2/300A along with other amenities and also for permanent injunction, restraining the defendants therein from interfering with their peaceful possession and enjoyment of the same and the said suit is pending without any interim orders.
- (4) The petitioner was also issued with a Notice dated 02.09.2020 by the Headquarters Deputy Tahsildar, Tiruchengode u/s.7 of the Tamil Nadu Land Encroachment Act, 1905, stating among other things that the petitioner had encroached upon the land comprised in S.No.373/13 of Molasi Village classified as Natham admeasuring to an extent of 0.0060.88 sq.m. and also put up a superstructure and it is followed by yet another Notice dated 03.02.2020 u/s.6 of the said Act, wherein the classification of the said land has been stated as Government Poramboke street.
- (5) The learned counsel for the petitioner would submit that the petitioner had purchased the said land in question through an unregistered Sale Deed dated 09.11.1984 and the predecessors in title has been issued with HSD patta as early as on 19.04.1976 and due to the wrong classification, the property owned by the petitioner, has been classified as the Government Poramboke Street and the representation dated 08.02.2020 though received, has not been given disposal and in the interregnum, the respondents taking the law into their own hand, has demolished the superstructure and therefore, prays for appropriate orders.
- (6) Per contra, the learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that the petitioner has filed a comprehensive civil suit for declaration of his right/title over the property and admittedly, the said suit is pending without any interim orders and further points out that even as per the representation of the petitioner dated 08.02.2020 submitted to the 3rd respondent, he admits that a part of the land in S.No.373/13 has been classified as Government Poramboke Road and if it is really so, the petitioner would have worked out his remedy before the competent Forum and having failed to do so, cannot make any grievance or complaint and due process of law has been followed

for evicting the petitioner and prays for dismissal of this writ petition with exemplary cost.

(7) This Court has considered the rival submissions and also perused the materials placed before it.

(8) A perusal and consideration of the materials placed, especially, the representation dated 08.02.2020 submitted by the petitioner to the 3rd respondent would disclose that according to the petitioner, a part of the land in S.No.373/13 of Molasi Village, has been wrongly classified as Government Poramboke Street and if it is really so, the remedy open to the petitioner is elsewhere.

(9) It is also to be noted at this juncture that the petitioner along with his wife had also filed a comprehensive civil suit for declaration of his title in respect of the property and other consequential reliefs in OS.No.168/2020 on the file of the Court of Additional District Munsif, Tiruchengode, and the same is pending without any interim orders and therefore, it may be open to the petitioner to pursue the said property and that apart, the petitioner in respect of the impugned Notice is having effective alternative remedy u/s.10 of the Tamil Nadu Land Encroachment Act, 1905, with a provision for stay u/s.10-A of the said Act and without availing the said remedy also, the petitioner came forward to file this writ petition.

(10) In the light of the above facts and circumstances and the reasons assigned above, this Court is of the considered view that the writ petition is not maintainable on account of the pendency of the comprehensive civil suit as well as the availability of the effective, efficacious and alternative remedy. If the petitioner is so advised, he is at liberty to avail / work out the said remedy in accordance with law.

(11) In the result, the writ petition stands dismissed with the above observation. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VI)
//True Copy//

Sub Assistant Registrar

AP

To

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Namakkal District.

+1cc to the Government Pleader, S.R.No.13748

WP.No.4653 of 2021

PMK(CO)
CS/26/03/2021



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