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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2021

CORAM:

THE HON'BLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

W.P.No.13981 of 2021
and
W.M.P.Nos.14850 & 14853 of 2021

Gupalliswamy

...Petitioner

Vs

1.The Revenue Divisional Officer,
Sub-Collector Office, Hosur - 635 109.

2.The Block Development Officer,
Hosur Taluk,Krishnagiri District.

3.P.Sivaraj

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings of the 1st Respondent in Pa.Mu.659/2021/A1 dated 15.06.2021 and quash the same as illegal, incompetent and ultravires and consequently forbearing the 1st respondent from taking any coercive steps of vacating the petitioner from the petitioner's property comprised in Survey No.802, Nallur Village, Hosur Taluk, Krishnagiri District.

For Petitioner : Mr.R.Jayaprakash

For Respondents : Mr. P.Balathandayutham,
State Government Counsel for R1.
Mr.Hasan Fizal for R2.

O R D E R

(Order of the Court was delivered by N.KIRUBAKARAN, J)

The matter has been heard through "Video Conference".

2.The Petitioner has come before this Court seeking to quash the order dated 15.06.2021 by which the encroachments which have been made by the Petitioner to an extent of 11 sq.m. comprised



in Survey No. 802/1B and encroachment made to an extent of 59 sq.m. comprised in Survey No. 802/2 are directed to be removed within a period of 15 days.

3. Mr. R. Jayaprakash, Learned Counsel for the Petitioner would submit that the Petitioner is the owner of the property comprised in Survey No. 802/3B to an extent of 35 sq.m. as the Petitioner has got patta in respect of the said property vide patta No. 503. However, the Respondents are trying to prevent the occupation of the property stating that encroachments have been made and proceeding to demolish the same.

4. It is further submitted by the Learned Counsel for the Petitioner that the Third Respondent herein has already filed a Writ Petition in W.P.No.4610 of 2021 by making the Petitioner herein as Second Respondent and an order has been passed on 02.03.2021 directing the First Respondent herein to dispose of the representation after giving notice to the Petitioner herein, whereas it is seen that the Petitioner has filed a Petition in W.M.P.No.13071 of 2021 to recall the order passed in W.P.No.4610 of 2021 and the same is pending. It is submitted that the order dated 02.03.2021 has been passed without notice to the Petitioner and therefore, the said Writ Miscellaneous Petition has been filed. Further, the Learned Counsel for the Petitioner submits that when the said Miscellaneous Petition filed by the Petitioner is pending before this Court, the Revenue Divisional Officer has hurriedly passed the order and therefore, the Learned Counsel for the Petitioner submits that the impugned order has to be set aside.

5. Heard Mr. R. Jayaprakash, Learned Counsel for the Petitioner, Mr. P. Balathandayutham, Learned State Government Counsel for R1 and Mr. Hasan Fizal, Learned Counsel for R2.

6. It is evident from the records that already a Writ Petition has been filed by one Mr. P. Sivaraj by making the Petitioner herein as party in W.P. No. 4610 of 2021 and this Court by order dated 02.03.2021 has disposed of the said Writ Petition and the relevant portion of the order is extracted as follows:-

"7. This Court, taking into consideration the limited scope of prayer sought for by the petitioner and without going into the merits of the claim projected by him either in his representation or in his writ petition, directs the 1st respondent to put the 2nd respondent on notice and thereafter, consider and dispose of the petitioner's representation dated 21.01.2021 on merits and in accordance with law and pass appropriate orders within a period of ten weeks from the date of receipt of a copy of this



order/uploading of the order in the website and communicate the decision taken, to the petitioner as well as to the 2 nd respondent or any other person/s concerned."

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7.This Court by order dated 02.03.2021 has only directed the First Respondent to consider and dispose of the representation given by one Mr. P.Sivaraj after giving opportunity to the said Mr. P.Sivaraj and the Petitioner herein. Accordingly, the First Respondent / the Revenue Divisional Officer issued notice to the Petitioner herein as evident from the notice dated 09.04.2021. In the said notice itself, it has been specifically stated that as per the direction of this Court in W.P. No. 4610 of 2021 dated 02.03.2021, the enquiry is sought to be conducted on 16.04.2021. If the Petitioner is so sure of his case that he has got documents to prove his title, he can produce the same before the First Respondent / Revenue Divisional Officer. However, on the other hand, the Petitioner appeared before the First Respondent on 16.04.2021 and merely stated that he has already filed a Petition in W.M.P.13701 of 2021 to recall the order passed by this Court and the same is pending.

8.This Court is of the view that even if the Writ Miscellaneous Petition is taken up and orders are passed, it is not going to improve the case of the Petitioner. What has been directed in the original order dated 02.03.2021 is that an opportunity was directed to be given to the Petitioner. However, the Petitioner failed to avail the same stating that he would get better order from this Court and rightly the earlier Bench has directed the First Respondent to conduct enquiry after giving notice to the Petitioner herein and pass appropriate orders.

9.It is evident from the records that the Petitioner has also appeared before the authorities and instead of putting forth his case to show his title and possession of the property, he simply stated that he has filed a Writ Miscellaneous Petition and there is a dispute between the Petitioner and one Mr. P.Sivaraj and came to know that the property which is in occupation of the Petitioner, is a pathway.

10.The Revenue Divisional Officer after taking into consideration of every aspect including the documents, had found that the property in Survey No.802/1B which has been classified as pathway has been encroached to an extent of 11 sq.m., out of the total extent of 0.08.00 Hectares and further, the property in Survey No. 802/2 which belong to Block Development Office, Hosur Union has been encroached to an extent of 59 sq.m., out of the total extent of 0.11.50 Hectares. Therefore, the Revenue Divisional Officer factually found that the Petitioner has



encroached upon 70 sq.m. in the pathway as well as in the property belonging to Block Development Office, Hosur Union.

11.No doubt, the Petitioner has got patta vide patta No. 503 in respect of the land in Survey No. 802/3B to an extent of 35 sq.m., and with regard to that, there is no finding that the Petitioner has encroached upon and hence, he can continue to enjoy the said property as he has got patta. What has been directed by the Respondent is to remove the encroachments in Survey No. 802/1B to an extent of 11 sq.m. and in Survey No. 802/2 to an extent of 59 sq.m. which has got nothing to do with Survey No.802/3B, which belongs to the Petitioner. Therefore, there is no need to interfere with the order passed by the Revenue Divisional Officer and the same is confirmed.

12.It is also seen that the factual finding has been reached by the authorities in the enquiry, in which the Petitioner has also participated and therefore, the principles of natural justice has been complied with and hence, there is no infirmity in the order passed by the Respondents. Therefore, the Respondents are directed to proceed with the removal of encroachments as per the order dated 15.06.2021.

13.With the above observations, this Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ay/rri

To

1.The Revenue Divisional Officer,
Sub-Collector Office, Hosur - 635 109.

2.The Block Development Officer,
Hosur Taluk,Krishnagiri District.

+1cc to the Government Pleader, S.R.No.31980

+1cc to M/s.R.Jayaprakash, S.R.No.31501 (28/02/2022)

W.P.No.13981 of 2021
and W.M.P.Nos.14850 & 14853 of 2021

AK(CO)
RGA(03/08/2021)