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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

W.P.Nos.25931 of 2019 and 2132 of 2021
and W.M.P.Nos.25388 of 2019 and 2411 of 2021

S.Augustin .. Petitioner in both petitions
Versus

1.The District Collector,
Kancheepuram Collectorate Office,
Kancheepuram District.

2.The Tahsildar,
Thiruporur Taluk,
Thiruporur,
Kanchipuram District.

3.The Block Development Officer,
Thiruporur Panchayat Union,
Kancheepuram District.

4.D.Therasa .. Respondents in both petitions

Prayer in W.P.No.25931 of 2019:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents not to take any steps for demolition of concrete construction to an extent of 1 metre in S.No.205/31, Nehru Nagar, Kelambakkam Village, Tiruporur Taluk, without following the due process of law and pass such other or further orders as may be deemed fit.

Prayer in W.P.No.2132 of 2021:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent in Na.Ka.No.1028/2018/Aa1 dated 21.01.2021 and quash the same as illegal and arbitrary and also forbear the respondents 1 to 3 from taking coercive action including demolishing the concrete the construction in S.No.168/part (new S.No.205/31), Nehru Nagar, Kelambakkam Village, Tiruporur Taluk and pass such other order.



For Petitioner in both W.Ps : Mr.G.Mohammed Aseef

For RR 1 to 3

: Mr.M.Elumalai
Additional Government Pleader

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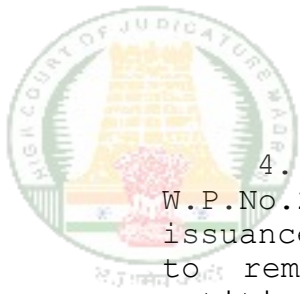
COMMON ORDER

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

By consent, all the petitions are taken up and are disposed of by this common order. The petitioner, on an earlier occasion filed W.P.No.25931 of 2019, praying for issuance of a Writ of Mandamus, directing the respondents, namely, the Collector, Kancheepuram Collectorate Office, Kancheepuram District, the Tahsildar, Thiruporur Taluk, Tiruporur, Kanchipuram District, the Block Development Officer, Thiruporur Panchayat Union, Kancheepuram District and Tmt.D.Therasa, from forbearing the respondents not to take any steps for demolition of concrete construction to an extent of 1 metre in S.No.205/31, Nehru Nagar, Kelambakkam Village, Thiruporur Taluk, without following the due process of law.

2. It is a case of the petitioner that the property situated at Old S.F.No.168, New S.F.No.205/2, measuring an extent of 066 sq.m or 720 sq.ft, bearing Door No.2/193, Nehru nagar, Kelambakkam Village, Kelambakkam Firka, Thiruporur Taluk, Kancheepuram District, is classified as Grama natham (village site) and it was owned by Selvaraj / father of the petitioner and his father had acquired the said land about three decades back and also put up superstructure and was residing with his family and the revenue officials recognising his possession and enjoyment has also issued a patta in his name and the same was issued by the jurisdictional Tahsildar at Chengalpattu on 29.12.1995. It is the further case of the petitioner that the State Government of Tamil Nadu has constructed R.C.C.Concrete Group house and it was allotted to his father and from that time, he claims to be in possession and enjoyment of the same and after the demise of the father of the petitioner, the petitioner and his mother are in possession and enjoyment of the same, vide registered Release Deed dated 30.03.2012, by leasing the property in his favour.

3. The grievance expressed by the petitioner is that without taking note of the said facts, erroneously Eviction Notice came to be issued on December 2018, for which the petitioner has also submitted his response on 18.12.2018 and it is also followed by an appeal to the 1st respondent and despite receipt and acknowledgment, steps are being taken to illegally dispossess the petitioner from the land and superstructure in question and therefore, came forward to file this Writ Petition.



4. In Cont.P.No.411 of 2019, the 4th respondent in W.P.No.25931 of 2017, filed W.P.No.6213 of 2018, praying for issuance of a Writ of Mandamus directing the respondents 1 and 2 to remove the encroachment made by the 4th respondent / petitioner in W.P.No.25931 of 2019, on a public road in Old Survey No.168/part (new S.F.No.205/31 at Nehru Nagar, Kelambakkam Village, Thirupporur Taluk, within a stipulated time and the Writ Petition came to be disposed of, by directing the 1st respondent to take immediate action on the representation of the petitioner therein dated 05.02.2018 and to remove the encroachment, after conducting survey in the presence of both the parties and in accordance with law within a stipulated time frame.

5. The present Writ Petition in W.P.No.2132 of 2021 filed by the very same petitioner in W.P.No.25931 of 2019, made a challenge to the impugned notice of the local body namely Thirupporur, Panchayat Union, dated 21.01.2021 and in the light of the fact that the Compound Wall has been demolished on 01.10.2020 at 11:00 am and that apart, the land on which superstructure has been put up belonged or assigned in his favour, for which, patta has also been issued, it is not open to the respondents to dispossess the petitioner on the pretext of removal of encroachment and prays for appropriate orders.

6. The learned counsel appearing for the petitioner has drawn the attention of this Court to the order dated 12.09.2019, passed in W.P.No.25931 of 2019 and would submit that the Tahsildar, Tirupporur, has filed a report dated 12.09.2019, wherein he has stated among other things that the extent of encroachment made by the petitioner has been determined in survey numbers and it is situated at southern side of the property admeasuring an extent of 1.6 m, out of which 0.8 m said to be the house constructed by the petitioner and remaining 0.8m said to be the compound wall and on receipt of the said report, the petitioner undertakes to file an Affidavit of Undertaking to remove the encroachment and prayed for six weeks time for the said purpose and based upon the same, this Court has directed the petitioner to produce the Affidavit of Undertaking on the next date of hearing. It appears that the said affidavit has not been filed and however, has availed the benevolence of the said order.

7. The learned counsel appearing for the contempt petitioner has drawn the attention of this Court to the impugned communication of the local body, which is the subject matter of challenge in W.P.No.2132 of 2021 and would submit that admittedly what was removed was only the compound wall, not a superstructure as pointed out in the report of the Tahsildar, Thirupporur, dated 12.03.2019 and therefore, prays for



appropriate orders for punishing the respondent / contemnor on account of wilful disobedience and non compliance of the said order.

8. The learned counsel appearing for the petitioner in W.P.Nos.25931 of 2019 and 2132 of 2021 would submit that in the light of the communication of the 3rd respondent dated 24.09.2020, in Na.Ka.No.1028/2018/Aa1, encroachment on the part of the petitioner to an extent of 1m upon water way has been confirmed and it has also been removed and despite that attempt has been made to demolish the superstructure and would pray for appropriate orders.

9. This Court has carefully considered the rival submissions and also perused the materials placed before it and also perused the report of the Tahsildar, Tiruporur as well as the Plan annexed to it.

10. As pointed out in the earlier paragraphs, the copy of the report of the Tahsildar, Thiruporur, dated 12.09.2020, also been given to the learned counsel appearing for the petitioner, who on instructions, made submission before this Court that the petitioner may remove the encroachment, made by him, as pointed out by the Tahsildar, in his report and sought for six weeks time for the said purpose. Accordingly, this Court deferred the proceedings with further direction to produce the Affidavit of Undertaking to that effect, along with photographs on the next date of hearing. However the petitioner has availed the benefit of the said order and did not remove the same.

11. A perusal of the impugned communication dated 24.09.2020, passed by the Special Officer, Kelambakkam, Tiruporur Panchayat Union, which is the subject matter of challenge in W.P.No.2132 of 2021, would disclose that what was removed was only the compound wall and it is to be noted at this juncture that the petitioner in the light of the said Undertaking given before this Court, which has been taken on record in the order dated 12.09.2019 in W.P.No.25931 of 2019, is liable to remove the encroachment in the form of house to an extent of 0.8 m and admittedly, he has not done so.

12. The extent of encroachment pointed out by the Tahsildar, Tiruporur, in the above cited report, is 1.6 m and if he takes into consideration the removal of compound wall, the encroachment yet to be removed is 0.8m in the form of superstructure.

13. The primordial submission made by the learned counsel appearing for the petitioner is that the 4th respondent is having an axe to grind against the petitioner for the reason that she



also filed a Civil Suit in O.S. No.275 of 2014, along with one D.Senthamazhil Selvan, against the petitioner herein for permanent injunction and an attempt to get an interim order did not fructify and also resulted in dismissal of the said petition vide order dated 07.11.2017 and therefore, she is not entitled to make any grievance in this regard. Be that as it may, the petitioner in the affidavit filed in support of both the petitions, as well as typed set of documents, did not enclose the copies of the documents pertain to confirmation of allotment of the land in his favour and details of patta issued in his favour as well as allotment of R.C.C.Concrete Group house. In the considered opinion of this Court, the petitioner gave an undertaking before this Court in W.P.No.25931 of 2018, which has also been taken into consideration and an order came to be passed, in the light of the Undertaking that he may remove the encroachment within six weeks time and that he may also file photographs as to the removal of encroachment and however, he did not do so. It is to be noted at this juncture that the order based upon the said Undertaking came to be passed on 12.09.2019 and after nearly a lapse of two years, what was removed was only compound wall and part of superstructure in terms of the report of the Tahsildar, Thiruporur, dated December 2019, is yet to be removed and therefore, the impugned order which is the subject matter of challenge in W.P.No.2132 of 2021, is sustainable.

14. The learned counsel appearing for the petitioner would submit that it may be open to the petitioner to establish his right in respect of the land in question, in the light of the stand taken by him in the writ petitions, if the petitioner, is so advised and if it is available to him under law, subject to law of limitation and he may be at liberty to workout his remedy in accordance with law, by invoking the common law remedy.

15. This Court, in the light of the above facts and circumstances and reasons assigned, is of the considered view that there are no merits in this Writ Petition and accordingly, it deserves dismissal.

16. In the result, these Writ Petitions are dismissed subject to the above observation. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
Kancheepuram Collectorate Office,
Kancheepuram District.

2.The Tahsildar,
Thiruporur Taluk,
Thiruporur,
Kanchipuram District.

3.The Block Development Officer,
Thiruporur Panchayat Union,
Kancheepuram District.

W.P.Nos.25931 of 2019 and 2132 of 2021

PL (CO)
KM(27/04/2021)