



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P. (MD) .No.3481 of 2021

and

W.M.P (MD) Nos.2824 and 2825 of 2021

M.N.Abdul Rahim

... Petitioner

Vs.

1.The District Collector,
Dindigul District,
Dindigul.

2.The Assistant Divisional Engineer,
State Highways Department,
Law Ghats Road,
Kodaikanal,
Dindigul District.

... Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for records relating to the impugned proceedings of the 2nd respondent in Na.Ka.No.1/2018/A1 dated 04.09.2018 and quash the same as illegal and consequently forbear the respondents from interfering with the property subject matter of the impugned proceedings except following the due process of law.

For Petitioner : Mr.M.Mahaboob Athiff

For Respondents : Mr.B.Saravanan
Government Advocate

ORDER

(Order of the Court was made by PUSHPA SATHYANARAYANA, J.,)

This Writ Petition is filed for the issuance of a Writ of Certiorarified Mandamus, to quash the impugned proceedings of the second respondent in Na.Ka.No.1/2018/A1, dated 04.09.2018 and consequently to forbear the respondents from interfering with the



property subject matter of the impugned proceedings except following the due process of law.

2. Heard Mr.M.Mahaboob Athiff, learned counsel appearing for the petitioner and Mr.B.Saravanan, learned Government Advocate appearing for the respondents.

3.This writ petition pertains to land in Survey No.37/2A, Laws Ghat Road, Kodaikanal, Dindigul District. The writ petitioner claims to be the owner of the same and also got patta in Patta No.980 in his favour for having purchased the same on 05.02.1988. The petitioner has also constructed a shop in the said land, after obtaining appropriate permission from the planning authority and he has been in possession and enjoyment of the same for more than 33 years. While so, the second respondent has issued the impugned order of eviction, dated 04.09.2018 stating that the Survey No.D-3-3, is a pathway and the construction of bathroom and car parking in the said area is an encroachment and issued the impugned notice calling upon him to remove the encroachment and to restore the vacant possession. The said order is under challenge in the present writ petition.

4.Counter affidavit has been filed by the Assistant Divisional Engineer, Dindigul District, who issued the impugned notice. Though the impugned notice is challenged questioning the authority of the second respondent, it appears that the petitioner himself has given a representation to the second respondent to survey the land and to determine the question of encroachment. Though the impugned order refers that the survey was done even without giving notice to the petitioner, the order of eviction has been issued.

5.The copy of impugned order reveals that there is no survey done so far, even after filing of the writ petition, by the authorities. In such circumstances, the property in dispute is measured and demarcated the ownership of the petitioner and hence, the second respondent cannot issue the impugned eviction notice. Therefore, we are inclined to set aside the impugned notice.

6.In the result, the impugned notice dated 04.09.2018 in Na.Ka,No.1/2018/A1, is set aside and the authorities are directed to survey the disputed survey number in the presence of the petitioner, after issuing notice to him, in the event, there is an encroachment by the petitioner, it will be open to the authorities to take appropriate action against him. The petitioner is also directed to co-operate with the authorities in this regard. The entire exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.



7.This Writ Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

WEB COPY

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The District Collector,
Dindigul District,
Dindigul.

2.The Assistant Divisional Engineer,
State Highways Department,
Law Ghats Road,
Kodaikanal,
Dindigul District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-33806[F] dated 09/11/2021)

W.P. (MD) .No.3481 of 2021

and

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