



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.05.2021

CORAM

WEB COPY

**THE HONOURABLE MR.JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

W.P. (MD) No.9278 of 2021
and
W.M.P. (MD) No.6988 of 2021

K.Vivekanandan

... Petitioner

Vs.

1. The District Collector,
Tirunelveli District,
Tirunelveli.
2. The Commissioner,
Tirunelveli Municipal Corporation,
Tirunelveli.
3. The Assistant Commissioner,
Palayamkottai Zone,
Tirunelveli Municipal Corporation,
Tirunelveli.
4. The Tahsildar,
Palayamkottai Taluk,
Tirunelveli District,
Madurai.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents from taking any action or proceedings in respect of T.S.Nos.1707/3 and 1713/8, which is situated in Arivatta Nayanar Street, Palayamkottai, Tirunelveli Town without following due process of law.

For Petitioner	:	Mr.S.Saravanan
For Respondents	:	Mr.J.Gunaseelan Muthiah Additional Government Pleader for R1 & R4
	:	Mr.Aayiram K.Selvakumar for R2 & R3



ORDER

(Order of the Court was made by M.S.RAMESH,J)

By an earlier order, dated 15.02.2021, passed in W.P(MD)No.2716 of 2021 in the case of Santhanakumar Vs. the District Collector and others, this Court had disposed of the Writ Petition by directing the Commissioner of Tirunelveli Municipal Corporation to remove the encroachments in Survey No.1707 in Munaiyaduvar Nayanar Street, Palayamkottai, Tirunelveli Town.

2.The order of the Co-ordinate Bench in W.P(MD)No.2716 of 2021, dated 15.02.2021, reads as follows:-

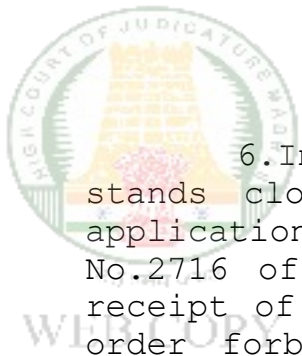
"2.The learned Special Government Pleader appearing for the third respondent submitted that there indeed is an encroachment, however, appropriate action is to be taken by the second respondent. He also produced a copy of the communication sent by the third respondent to the second respondent dated 13.02.2021

3.In such view of the matter, we call upon the second respondent to take appropriate action to remove the encroachment, after following due process of law and after putting the alleged encroachers on notice. The needful in this regard will have to be done within a period of eight weeks from the date of receipt of a copy of this order."

3.In the present Writ Petition, the petitioner seeks for issuance of a Writ of Mandamus, forbearing the respondents from taking any action in respect of the same survey number. Effectively, what the petitioner seeks is for in the prayer is against the directions given by the Co-ordinate Bench in the aforesaid case, which is not permissible.

4.The learned counsel for the petitioner would submit that though the petitioner herein was arrayed as respondent No.4 in the Writ Petition in W.P(MD)No.2716 of 2021, they did not have an opportunity to put-forth their objections.

5.This Court is of the view that in case the petitioner is aggrieved of not having been heard while the order was passed in the Writ Petition, the option available to him would be to seek for review of the order and filing of this Writ Petition may not be appropriate. In this context, if liberty is granted to the petitioner herein to file a review application, the ends of Justice could be secured. However, since the petitioner claims that he holds the necessary revenue documents for the subject lands, including the patta, the petitioner's interest could be protected till he works out his remedy by filing the review application.



6. In the light of the above observations, the Writ Petition stands closed, with liberty to the petitioner to file a review application against the order, dated 15.02.2021, passed in W.P(MD) No.2716 of 2021, within a period of eight weeks from the date of receipt of a copy of this order. Till such time, there shall be an order forbearing the respondents from taking any coercive action against the petitioner herein in respect of the property in T.S.Nos.1707/3 and 1713/8 in Arivatta Nayanar Street, Palayamkottai, Tirunelveli Town. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (AD-II)
Vacation Officer

// 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,
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Tirunelveli.
2. The Commissioner,
Tirunelveli Municipal Corporation,
Tirunelveli.
3. The Assistant Commissioner,
Palayamkottai Zone,
Tirunelveli Municipal Corporation,
Tirunelveli.
4. The Tahsildar,
Palayamkottai Taluk,
Tirunelveli District,
Madurai.

+1 CC to Mr.S.SARAVANAN, Advocate (SR-18473[F] dated 05/05/2021)
+1 CC to Special Government Pleader (SR-18494[F] dated 06/05/2021)

W.P. (MD)No.9278 of 2021 and
W.M.P. (MD)No.6988 of 2021
05.05.2021

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