



W.P.No.6157 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2022

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.6157 of 2017

and

W.M.P.No.6623 of 2017

Rajammal

. . . Petitioner

Vs.

1. The Director of School Education
DPI Campus, College Road,
Chennai-600 006.
2. The District Collector,
Vellore District,
Vellore-9
3. The Chief Educational Officer,
Collector Office Building,
Vellore-9
4. The District Educational Officer,
Collector Office Building,
Vellore-9
5. The Executive Officer,
(Building Construction & Maintenance)
PWD, Vellore-6.



W.P.No.6157 of 2017

6. The Head Master,
Govt.High School,
Palikuppam, Ambur taluk,
Vellore District.

. . . Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing the respondents from proceeding the construction in the petitioner's property comprising the survey No.40/14, measuring 67 cents, comprising in survey No.42/12, measuring 16.5 cents and consequently direct the respondents to remove the construction materials namely sand, bricks etc., from the petitioner's premises, the petitioner representation dated 18.07.2016.

For Petitioner : No Appearance

For Respondents : Mr.M.S.Premkumar,
Government Advocate

ORDER

The present petition has been seeking to forbear the respondents from proceeding with the construction in the petitioner's property in Survey No.40/14 measuring to an extent of about 67 cents and Survey No.40/2012 measuring to an extent of about 16.5 cents and direct the respondents to remove the construction materials namely sand, bricks etc., based on the petitioner representation dated 18.07.2016.



W.P.No.6157 of 2017

2. It is the case of the petitioner that he had purchased the subject property vide the sale deed dated 05.01.1994, in respect of which property, gift deed dated 14.10.2015 has been illegally executed in favour of the 6th respondent School, wherein, the 5th respondent had constructed a building, which prompted the petitioner to file a suit in O.S.No.35 of 2015 on the District Munsif Court, Ambur seeking declaration of the above said gift deed, in which, interim injunction was granted in I.A.No.97 of 2015, despite the same, the construction work is being carried out by the respondents in the above said property. The petitioner made several representations to the respondents requesting to forbear the respondents from carrying out the construction work, however, same was not considered. Hence, the present petition has been filed.

3. Learned counsel for the petitioner submits that despite the order of interim injunction having passed by the trial court in I.A.No.97 of 2015 in O.S.No.35 of 2015, respondents have constructed the building in the subject property, which action of the respondents needs interference of this Court and therefore this Court may injunct the respondents 3 to 6 from carrying out the



W.P.No.6157 of 2017

construction work in the above said property.

WEB COPY

4. Learned Additional Government Pleader appearing for the respondents relying on the counter affidavit submits that the patta in respect of the above said property stands in the name of one Palani and Saroja who are the son and wife of one Krishna Gounder, and based on which, the above gift deed was executed. Further, as against the order of interim injunction granted by the trial court in I.A.No.97 of 2015 in O.S.No.35 of 2015, respondents 2 & 3 have filed CMA on the file of the Sub Court, Vanniyambadi in CMA No. 4 of 2016 and I.A.No.7/2016 and the Government has filed CMA.No.6 of 2016 in which I.A.No.18 of 2016 has been filed seeking stay of the order of interim injunction and the same is pending.

5. It transpires from the record that there is a property dispute between the petitioner and the said Palani and Saroja, which is the subject matter of O.S.No.35 of 2015 and interim injunction was granted in the interlocutory application. The above said fact is not disputed by the



W.P.No.6157 of 2017

petitioner. When an interim injunction has been granted in a suit, the proper remedy available to the petitioner is only to file appropriate Execution Petition and it is not open to the petitioner to come before this Court by filing the present Writ Petition seeking this Court to enforce the order of interim injunction granted in the suit. Therefore, the relief sought for by the petitioner cannot be granted and the appropriate remedy open to the petitioner is to approach the civil Court for the said order of injunction.

6. For the reasons aforesaid, this Writ Petition is devoid on merits and the same is dismissed accordingly. No Costs. Consequently, the connected Miscellaneous Petition is closed.

25.11.2022

NHS

Index : Yes / No

Internet : Yes / No



WEB COPY



W.P.No.6157 of 2017

M.DHANDAPANI, J.

NHS

To

1. The Director of School Education
DPI Campus, College Road,
Chennai-600 006.
2. The District Collector,
Vellore District,
Vellore-9
3. The Chief Educational Officer,
Collector Office Building,
Vellore-9
4. The District Educational Officer,
Collector Office Building,
Vellore-9
5. The Executive Officer,
(Building Construction & Maintenance)
PWD, Vellore-6.
6. The Head Master,
Govt.High School,
Palikuppam, Ambur taluk,
Vellore District.

W.P.No.6157 of 2017

25.11.2022