



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2022

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

**W.P. (MD) No.227 of 2022
and
W.M.P. (MD) No.165 of 2022**

S.Venugopal

... Petitioner

-vs-

1.The Commissioner
Madurai Corporation
Anna Maligai, Madurai

2.The Assistant Commissioner
South Zone, Madurai Corporation
Madurai

3.S.Bhawarlal

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus to direct the respondents 1 and 2 to take appropriate action against the unauthorized construction made by the third respondent in the building Door No.34 & 34A, Sambanthamoorthy Street, Madurai, having an extent of 3500 sq.ft., belongs to the Tirupparankundram Arumuga Nainar Trust.

For Petitioner : Mr.Suriya Narayanan.R.

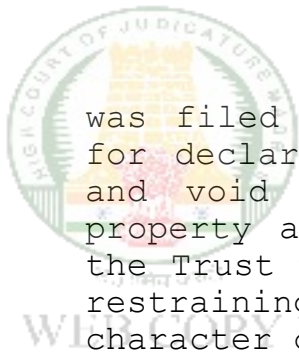
For Respondents : Mr.S.Vinayak
Standing Counsel for R1 & R2

O R D E R

[Order of the Court was made by DR.G.JAYACHANDRAN, J.]

This writ petition is filed by one of the Trustees of Tirupparankundram Arumuga Nainar Trust alleging that the Trust property leased out to the third respondent for commercial purpose in the year 2007 has not been handed over back to the Trust in

<https://hcservices.courts.gov.in/hcservices/>



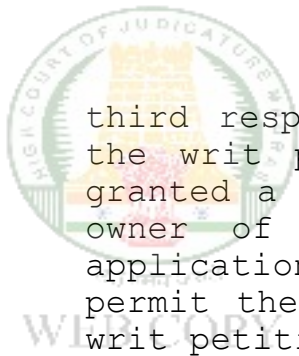
was filed by the Trust before the District Munsif Court, Madurai, for declaring the lease in favour of the third respondent as null and void and for directing the defendants to vacate the suit property and hand over the keys thereof with vacant possession to the Trust without any let or hindrance and for permanent injunction restraining the defendants from in any way altering or changing the character of the suit property.

2. The Judgment and Decree dated 29.04.2021 passed in the aforesaid suit is now a subject matter of the appeal suit in A.S.No.35 of 2021, on the file of the Sub Court, Madurai. While so, the present writ petition has been filed stating that the third respondent, in spite of the decree of injunction granted against him, without getting any permission from the respondents 1 and 2 herein, has altered the structure of the demised premises by demolishing certain portions and also continuing unlawful and unauthorized construction and therefore, a representation dated 02.12.2021 has been forwarded to the respondents 1 and 2 and the present writ petition is filed before this Court immediately thereafter on 04.01.2022 for a writ of mandamus to direct the respondents 1 and 2 to take appropriate action against the unauthorized construction made by the third respondent in the building bearing Door Nos.34 & 34A, Sambanthamoorthy Street, Madurai, which is alleged to be owned by the petitioner - Trust.

3. A perusal of the affidavit and the documents filed in support of the writ petition clearly show that the subject property was let out to the third respondent under a registered Lease Deed dated 30.03.2007, upon which the third respondent is alleged to have put up some construction. Now, due to some other reasons, the Trustees have moved the Civil Court to declare the registered Lease Deed as null and void and they have also succeeded in the civil suit. Apparently, a construction has been put up by the third respondent during the subsistence of the lease. This writ petition is filed in order to prevent the third respondent from putting up any further construction unauthorizedly and according to the writ petitioner, such construction is unauthorized under Section 272 of the Madurai City Municipal Corporation Act, 1971.

4. From the typed set of papers, this Court also finds that against the decree of the Trial Court, dated 29.04.2021, the third respondent has preferred appeal suit in A.S.No.35 of 2021 before the Sub Court, Madurai and the same is pending. The petitioner herein has already initiated execution proceedings in E.P.No.93 of 2021, before the District Munsif Court, Madurai and it is also pending since there is no stay granted in the appeal suit.

5. The grievance of the petitioner herein being civil in nature and is also seized of by the competent Civil Court, notwithstanding the allegation that the construction put up by the



third respondent is unauthorized construction, the remedy open to the writ petitioner is to approach the Court, which has already granted a decree in his favour. We have no doubt that unless the owner of the building given consent for any construction or application for construction / demolition, the local body will not permit the same. The law and fact being so, by entertaining this writ petition, which has no foundation at all, would be only opening two doors at two different forums for the very same relief. When there is efficacious alternate remedy available to the petitioner, we are not inclined to exercise the power under Article 226 of the Constitution of India. Hence, we direct the petitioner to workout his remedy before the Civil Court, where the subject matter is already pending.

6. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

krk

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 Commissioner
Madurai Corporation
Anna Maligai, Madurai
- 2.The Assistant Commissioner
South Zone, Madurai Corporation
Madurai

+1 CC to M/s.S.VINAYAK, Advocate (SR-870[F] dated 07/01/2022)

W.P. (MD) No.227 of 2022 and
W.M.P. (MD) No.165 of 2022
07.01.2022

RD(24.01.2022) 3P 4C