



W.P(MD).No.4358 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 02.08.2022

ORDER PRONOUNCED ON : 10 .08.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.4358 of 2012

and

M.P(MD).No.1 of 2012

1.P.Arunachalam (Deceased)

2.Nagarajan

....Petitioner

(2nd Petitioner substituted vide Court order dated 05.07.2022)

Vs

1.The Project Director
Tsunami Project Implementation Unit
Rural Development and Panchayatraj Department
100, Annasalai
Guindy, Chennai 32

2.The District Collector Cum Chairman
Kanyakumari Tsunami District Implementation Unit
Collectorate, Nagercoil
Kanyakumari

3.Project Co-ordinator
Kanyakumari Tsunami District Implementation Unit
Collectorate, Nagercoil
Kanyakumari

4.C.Santhakumar

.....Respondents



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Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Maa.Se.A.01/932/2010 dated 12.03.2012 on the file of the respondent No.2 and quash the same as illegal and consequently direct the respondent Nos.1 and 3 to complete the Tsunami Rehabilitation House in the petitioner's land in New Survey No.465/1 in extent of 2.08 cents situated at D.No.33/66, Vanigar Street, Eathamozhy Post, Dharmapuram Village, Agateeswaram Taluk, Kanyakumari District.

For Petitioner	: Mr.S.Rajasekar For Mr.T.Lajapathi Roy
For R1 to R3	: Mr.N.Muthuvijayan Special Government Pleader
For R4	: Mr.C.Godwin

ORDER

The writ petition has been filed challenging an order passed by the second respondent herein under which the construction work of the writ petitioner's house under Tsunami Rehabilitation Scheme was cancelled.

2. According to the petitioner, his father Pandaram was residing in New Survey No.465/1 in an extent of 2.08 cents for more than 100 years. After his death, he has been enjoying the said property and the revenue Patta has been granted in the name of his son. He has also obtained electricity service connection and paying property tax to the said building.



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3. According to the petitioner, the said house was selected by the respondent for rebuilding the same under Tsunami Rehabilitation Scheme. On such selection, he was directed to demolish the temporary house and requested to reside in an alternative place. This order was passed on 13.08.2010. Hence, the petitioner had immediately demolished the said construction and moved to an alternative place. Thereafter, the construction work was started and it was at the lintel level. At that point of time, the fourth respondent herein had made an objection to the second respondent that the land in which such construction is being undertaken belongs to him and a second appeal is pending before the High Court in S.A(MD).No.725 of 2009. Based on the said representation, the impugned order was passed by the second respondent herein directing to stop the construction work.

4. According to the learned counsel for the petitioner, the petitioner is eligible to be a beneficiary under the said scheme and hence, the cancellation is illegal. The learned counsel had further contended that citing pendency of the second appeal, the construction work cannot be stopped. He had further contended that the decree for recovery of possession passed by the First Appellate Court has been stayed in the second appeal in M.P(MD).No.1 of 2009 and hence, the authorities have no right in stopping the construction work.



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5.Per contra, the learned counsel for the respondents had contended that when there is a decree for recovery of possession, the petitioner cannot be permitted to proceed with the construction.

6.I have considered the submissions made on either side and perused the materials available on record.

7.The title to the above said property has been decided in second appeal in S.A(MD).No.725 of 2009. The First Appellate Court in A.S.No.83 of 2008 has granted a decree for declaration of title, recovery of possession and permanent injunction in favour of the fourth respondent herein on 06.04.2009. The said decree has been confirmed by this Court in S.A(MD).No.725 of 2009. The writ petitioner has been found to be not having title over the disputed land and suffered a decree for recovery of possession. Further the petitioner has also suffered a decree for permanent injunction not to alter the physical features of Survey No.465/1.

8.In view of the above said decree, the petitioner would not be entitled to proceed with the construction work in the disputed Survey number which is the subject matter in S.A(MD).No.725 of 2009. In view of the judgment



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and decree in S.A(MD).No.725 of 2009, I do not find any illegality or infirmity in the order passed by the second respondent herein. The writ petition is devoid of any merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.08.2022

Internet : Yes/No
Index : Yes/No
msa

To

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R.VIJAYAKUMAR, J.

msa

Pre-delivery order made in
W.P.(MD).No.4358 of 2012
and
M.P(MD).No.1 of 2012

10.08.2022