



W.P(MD)No.7282 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.7282 of 2013

and

M.P(MD)Nos.2 and 3 of 2013

1.Kandasamy

2.K.Murugan

... Petitioners

Vs.

1.The District Collector,
Virudhunagar,

2.The Revenue Divisional Officer,
Sivakasi,
Virudhunagar District.

3.A.Ramasamy

4.A.Krishnasamy

5.K.Hariram

6.K.Sathiyamoorthy

7.C.Perumal Naidu

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the second respondent in his proceedings in



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Na.Ka.A1/4322/2012 dated 01.04.2013 quash the same.

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For Petitioner	: Mr.S.Venkatesh for Mr.A.Sivaji
For R1 & R2	: Mr.M.Linga Durai
For R3 - R7	: Mr.S.Ramesh

ORDER

The present writ petition has been filed challenging an order passed by the second respondent herein, under which he has directed the petitioner not to put up any construction pending disposal of an appeal arising out of Tamil Nadu Patta Passbook Act.

2. According to the learned counsel for the petitioner, the second respondent has no jurisdiction, whatsoever to pass an order of interim injunction restraining the parties to the patta proceedings from putting up construction or enjoying the property. Hence, the present writ petition.

3. Per contra, the learned counsel for the private respondents had contended that it is the only access or pathway to the respondents. If any construction is put up by the petitioner, that would seriously affect their rights. Hence, the present order is legally sustainable.



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4. I have carefully considered the submissions made on either side.

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5. A patta has been granted for Survey No.379/2 in favour of the writ petitioner by an order, dated 16.04.2007. The said order has been challenged by the private respondents herein before the second respondent. While the appeal was pending, the second respondent has passed the present impugned order directing the writ petitioner not to put up any construction during the pendency of the appeal. The second respondent has got jurisdiction only to grant order of interim stay of the order passed by the Tahsildar. He has no jurisdiction, whatsoever to grant an order of interim injunction restraining the putting up of construction, alienation of the property or restraining enjoyment of the property. Any order passed in this regard by the second respondent will only amount to usurping the jurisdiction of the Civil Court.

6. The private respondents had filed O.S.No.163 of 2003 on the file of the Additional District Munsif Court, Srivilliputhur for the relief of declaration of half right in the pathway and permanent injunction with regard to the same survey number, namely Survey No.379/2. The said suit was dismissed. As against the same, the private respondents have filed A.S.No.27 of 2006 on the file of Principal District Court, Virudhunagar at Srivilliputhur. The appeal was also dismissed on



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04.01.2008. Thereafter, the second respondent has chosen to pass the present impugned order granting an order of injunction restraining the petitioner herein from putting up construction. In view of the fact that already the Civil Court has decided in favour of the writ petitioner and the second respondent has no jurisdiction, whatsoever to grant such kind of injunction orders, this Court is of the view that interim order is without jurisdiction and the same is liable to be set aside.

7. In view of the above said discussion, order impugned in the writ petition is set aside. The second respondent is directed to pass orders in the appeal after giving due opportunity to the petitioner and the private respondents herein within a period of twelve (12) weeks from the date of receipt of a copy of this order.

8. With the above said observations, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

16.09.2022

Index : Yes / No
Internet : Yes / No



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To

- 1.The District Collector,
Virudhunagar,
- 2.The Revenue Divisional Officer,
Sivakasi,
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R.VIJAYAKUMAR ,J.

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Order made in
W.P(MD)No.7282 of 2013

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16.09.2022