



W.P.(MD)No.17988 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.P.(MD)No.17988 of 2022
and W.M.P.(MD) No.13128 of 2022

S.Pandian

... Petitioner

Vs.

1.The Sub Collector,
Periyakulam,
Theni District.

2.The Commissioner,
Periyakulam Panchayat Union,
Theni District.

3.The Block Development Officer,
Periyakulam Panchayat Union,
Theni District.

4.The President,
Melmangalam Panchayat,
Periyakulam Panchayat Union,
Theni District.

5.Manickam

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, directing the Respondents 1 to 3 to give suitable instruction to the 4th respondent to take necessary action against the unauthorized construction of the 5th



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Respondent in Survey No.1192/2 in Melmangalam Village, Periyakulam Taluk, Theni District to an extent of undivided 72 cents as per the Rule 34(1) of the Tamil Nadu Panchayat Building Rules, 1970.

For Petitioner : Mr.S.Saravanakumar

For Respondents 1 & 2 : Mr.S.P.Maharajan
Special Government Pleader

For Respondents 3 and 4 : Mr.N.Satheesh Kumar
Additional Government Pleader

ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

This Writ Petition is filed for issuance of a Writ of Mandamus, directing the Respondents 1 to 3 to give suitable instruction to the 4th respondent - local body to take necessary action against the unauthorized construction of the 5th Respondent in Survey No.1192/2 in Melmangalam Village, Periyakulam Taluk, Theni District to an extent of undivided 72 cents as per Rule 34(1) of the Tamil Nadu Panchayat Building Rules, 1970.

2. Heard Mr.S.Saravanakumar, learned counsel for the petitioner, Mr.S.P.Maharajan, learned Special Government



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Pleader, appearing for the respondents 1 and 2 and Mr.N.Satheesh Kumar, learned Additional Government Pleader, appearing for the respondents 3 and 4.

3. The case of the petitioner is that the property in Survey No.1192/2 in Melmangalam Village, Periyakulam Taluk, Theni District, measuring an extent of undivided 72 cents is his ancestral property. It is his further case that the land belongs to the petitioner and 18 others. It is admitted by the petitioner that he has filed a civil suit in O.S.No.48 of 2011, on the file of District Munsif Court, Periyakulam, for partition and the 5th respondent is the 13th defendant in the said suit. It is the grievance of the petitioner that the petitioner is waiting for the outcome of the suit. However, the 5th respondent taking advantage of the fact that the suit property is vacant land, started constructing a building without permission from other co-owners or statutory authorities. It is his specific case that the 5th respondent has not obtained any planning permission from the local body. It is in the said circumstances, the petitioner has come forward with the present writ petition to stop the illegal construction, according to him, by the 5th respondent.



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4. Though the petitioner has got every right to raise his objection as a person interested to prevent any unlawful construction without prior permission for construction, this Court is not inclined to entertain the writ petition for the following reasons:-

4.1 The petitioner claimed ownership in respect of an extent of 72 cents. He had also filed a suit for partition. Therefore, the petitioner's right is protected and if any construction is made, it is subject to the outcome of the civil suit.

4.2 The petitioner has effective alternative remedy to approach the civil Court, seeking for injunction, if he is able to establish that prima facie case and balance of convenience is in his favour. As a co-owner he is entitled to be in joint-ownership of the property as it is well settled that a co-owner is entitled to enjoy his joint ownership in respect of every inch of property, which is common to every co-owner.

4.3 If the petitioner's interest is affected, as a plaintiff, he may also restrain the 5th defendant. If he obstructs or resists for grant of building plan approval for the construction of the building,



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that is proposed by the 5th respondent, it is likely that local body may not give permission to the 5th respondent. In such circumstances, the petitioner having vested interest in the subject property has to approach the civil Court in the pending suit for appropriate relief.

4.4 Learned Special Government Pleader appearing for the respondents 1 and 2 states that the 5th respondent in fact had applied for permission and that the local body is unable to process the same on account of the objections raised by the petitioner himself. The 5th respondent's application for building plan approval is pending consideration and is not being considered by the local body on account of the objections made by the petitioner himself citing the pendency of suit.

4.5 From the facts, it is understood that the local body has not processed the application for building plan approval and they may not also prevent the 5th respondent from proceedings with the construction or pass order to stop construction on account of the fact that the application for plan approval, already filed by the 5th respondent, is pending.



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5. In view of the above, this Court is not inclined to entertain the writ petition, having regard to the peculiar facts and circumstances of the case. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed. However, it is open to the petitioner to approach the civil Court for appropriate interim relief.

[S.S.S.R., J.] [S.S.Y., J.]
10.08.2022

Index : Yes / No

sj

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and

S.SRIMATHY, J.

sj

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