



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.06.2022
C O R A M

THE HONOURABLE **MR. JUSTICE M. NIRMAL KUMAR**

WEB COPY

W.P(MD).No. 456 of 2016 and
WMP(MD).No.378 of 2016

A. Ramu

... Petitioner

Vs.

1.The Madurai City Municipal Corporation,
Through its Commissioner,
Anna Maligai,
Madurai.

2.The Assistant Commissioner,
Madurai City Municipal Corporation,
Anna Maligai,
Madurai.

3.K.R.Akbar

... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 28.09.2015 in Z2A9/06085/14 passed by the second respondent and quash the same and consequently, direct the first respondent to conduct an enquiry regarding the four house tax assessment numbers 319690, 321041, 321042 and 321043 standing in the names of the legal heirs of Mokkayan.

For Petitioner : Mr.J .Barathan
For respondents 1 & 2 : Mr.R. Murali
Standing Counsel
For R3 : No appearance

ORDER

The petitioner has filed this Writ Petition calling for the records relating to the impugned order, dated 28.09.2015 made in Z2A9/06085/14 passed by the second respondent and quash the same and consequently, direct the first respondent to conduct an enquiry regarding the four house tax assessment numbers 319690, 321041, 321042 and 321043 standing in the names of the legal heirs of Mokkayan.



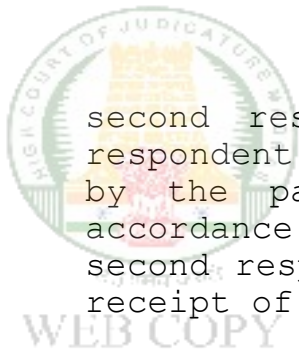
2. The contention of the petitioner is that the petitioner and his predecessors are in peaceful possession and enjoyment of the property situated in old Town Survey Nos. 1210, 1195 corresponding to the new Town Survey Nos.1212 and 1214 situated in Chavadi Street, Madurai, Somasundara Velalar Street in Goripalayam Village at Madurai for the past 75 years. The property consists of a vacant site and houses measuring an extent of 11,272 Square feet. Initially, one Mokkyan, S/o. Nalla Perumal was in peaceful possession and enjoyment of the property since the year 1938, without any interruption. Thereafter, his legal heirs continued to stay in the said property. In the year 1968, one K. Rasool Mohideen, who is the father of the third respondent herein claiming to be the power of attorney, filed a private complaint in C.C.No.5 of 1968 before the Executive Second Class Judicial Magistrate No.V, Madurai as against the said Mokkayan and his sons for the offences under Sections 447 and 379 IPC with regard to the criminal trespass and theft. Earlier, the civil suit filed by the forefathers of the third respondent in O.S.No.254 of 1970 claiming their right, was dismissed on 30.08.1971. Thereafter, the father of the third respondent viz., Rasool Mohideen filed A.S.No.49 of 1972 and the same was dismissed, confirming the order of the trial Court on 11.12.1973. Against which, they have also filed a Second Appeal in S.A.No.1355 of 1974 and the same has also been dismissed on 08.02.1977. Since all the Civil Courts have concurred in holding that Mokkayan and his legal heirs are in peaceful, adverse possession and enjoyment of the suit property without any interruptions, the third respondent had filed a civil suit in O.S.No.819 of 1979 and the same has also been dismissed.

3. The learned counsel appearing for the petitioner referring to a copy of the Judgment of the suit, submitted that the categorical finding of the civil Court is that the claim of the third respondent has been negated as dismissed.

4. Contrary, in the impugned notice, the Corporation has made in paragraph Nos. 5 and 6 that in the suit in O.S.No.254 of 1970, except 609 Square Feet of vacant site belong to the petitioner and 10663 Square feet is under the enjoyment of the third respondent which is contrary to the facts as well the findings of the Civil Court. Hence, the impugned notice to be set aside.

5. The respondents 1 and 2 fairly submitted that the contents in the impugned notice paragraph Nos.5 and 6 are contrary to the finding of the trial Court which has to be re-considered and revisited.

6. In view of the same, this Court is inclined to set aside the impugned order and accordingly set aside the impugned order passed by the second respondent, dated 28.09.2015, directing the



second respondent to issue notice to the petitioner and third respondent and thereafter, to consider the documents to be submitted by the parties and pass appropriate orders on merits and in accordance with law. The said exercise shall be completed by the second respondent within a period of three months from the date of receipt of a copy of this order.

7. Accordingly, the Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Admn.I)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

To

1.The Madurai City Municipal Corporation,
Through its Commissioner,
Anna Maligai,
Madurai.

2.The Assistant Commissioner,
Madurai City Municipal Corporation,
Anna Maligai,
Madurai.

+1 CC to M/s.R. MURALI, Advocate (SR-26299[F] dated 17/06/2022)

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-26313[F] dated 17/06/2022)

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SS/06/07/2022/ 3P 5C