



W.P.No.10120 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 24.01.2023**

CORAM :

**THE HON'BLE MR. JUSTICE R. MAHADEVAN**

**AND**

**THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ**

**W.P.No.10120 of 2017**

N.Sivakumar (Ex-Indian Navy)

... Petitioner

Vs.

1.General Officer Commanding-in-Chief,  
Southern Command,  
Pune, Maharastra.

2.The Chief Executive Officer,  
Office of the Wellington Cantonment Board,  
Wellington Post,  
The Nilgiris - 643 232.

3.Devindra Malik

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Mandamus, directing the respondent herein to dispose of the Appeal filed by the third respondent and forwarded by the second respondent herein in No.UAC/Davindra Malik/330/Engg. dated 21.04.2014 which is pending before the first respondent Appellate Authority, so as to enable the petitioner to remove the encroachment and the unauthorized construction put up by the third



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respondent in the petitioner's land to an extent of 264.38 sq.feet situated at Door No.VI/83 Asst. No.VI/84 adjacent to Door No.VI/81 at Barracks, Wellington, The Nilgiris District.

For petitioner : Mr.A.Bobbli

For respondents : No appearance for R-1

Mr.Vijayan  
M/s.King & Partridge for R-2

Mr.M.Aravind Subramanian for R-3

### **ORDER**

(Order of the Court was made by R. MAHADEVAN, J.)

This writ petition has been filed by the petitioner seeking a direction to the first respondent to dispose of the Appeal filed by the third respondent, which was forwarded by the second respondent vide communication dated 21.04.2014.

2. The case of the petitioner is that he and his family members are the owners of the land situated in S.No.314/2 at Barracks Wellington Post, The Nilgiris, measuring a total extent of 1.56 acres, out of which an extent of 0.08 cent was sold to Devendra Malik, the third respondent, during the year 1990. Later, the third respondent constructed a house at Door No.VI/83, Asst. No.VI/84



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adjacent to the property of the petitioner in Door No.VI/81, and also put up illegal construction encroaching his land, such as, toilet, roof and raising wall. Therefore, the petitioner made a representation to the second respondent on 14.12.2011, requesting to remove the illegal construction put up by the third respondent. Upon receipt of the same, the second respondent issued a notice dated 23.03.2011, calling upon the third respondent to remove the illegal construction made by him to an extent of 264.38 sq.ft on the petitioner's property stating that no prior approval was obtained for such construction and also show cause as to why action should not be initiated against him under the Cantonment Act, 2006. Aggrieved over the same, the third respondent filed an appeal, which was forwarded by the second respondent to the first respondent on 21.04.2014. Thereafter, the appeal is pending with the first respondent and nothing progressed. Therefore, this writ petition by the petitioner.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents 2 and 3. Despite service of notice and the name of the first respondent having been printed in the cause list, there is no representation on their behalf.

4. Considering the limited scope of the writ petition and also taking note of the fact that the appeal filed by the third respondent as against the order of the second respondent dated 23.03.2011, is pending before the first respondent, who



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is the appellate authority, this court without going into the merits of the case, directs the first respondent to dispose of the appeal filed by the third respondent on merits and in accordance with law, after affording due opportunity of hearing to all the parties, within a period of eight weeks from the date of receipt of a copy of this order.

5. With the above direction, this writ petition stands disposed of. No costs.

**[R.M.D,J.] [M.S.Q, J.]**  
**24.01.2023**

r n s  
Speaking (or) Non-Speaking Order  
Internet : Yes.  
Index : Yes /No

To

- 1.General Officer Commanding-in-Chief,  
Southern Command,  
Pune, Maharastra.
- 2.The Chief Executive Officer,  
Office of the Wellington Cantonment Board,  
Wellington Post,  
The Nilgiris - 643 232.

**R. MAHADEVAN, J.**  
**and**



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**MOHAMMED SHAFFIQ, J.**

r n s

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**24.01.2023**