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W.P.(MD)NO.800 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.800 of 2023 and
W.M.P.(MD)No.778 of 2023

Tamilmaran

... Petitioner

Vs.

1. The District Collector,
O/o.The District Collector,
Thanjavur District.
2. The Commissioner,
O/o.The Commissioner,
Kumbakonam Municipal Corporation,
Kumbakonam,
Thanjavur District.
3. N.Venkatachalam,
Then Tahsildar Kumbakonam,
Now Tahsildar Highways Land Acquisition,
Kumbakonam, Thanjavur District.
4. M.Senthil Murugan,
Commissioner,
Kumbakonam Municipal Corporation,
Kumbakonam.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 2nd respondent namely, the Commissioner not to interfere with the petitioner peaceful possession and enjoyment of the



petitioner nanja land bearing T.S.No. 1019 an extent of 1.12 acre, in Ward No.6 block 17 Ullur Village, Kumbakonam Town.

For Petitioner : Mr.Elephant G.Rajendran

For R-1 : Mr.A.K.Manikkam,
Special Government Pleader.

For R-2 : Mr.G.Prabhu Rajadurai,
for Mr.M.Rajarajan.

For R-3 : Mr.A.Sivaji

* * *

ORDER

Heard the learned counsel on either side.

2. The petitioner wants this Court to restrain Kumbakonam Municipality from interfering with his possession and enjoyment of the petition mentioned land. The learned counsel appearing for the petitioner took me through the averments set out in the affidavit filed in support of this writ petition. He contended that the property was assigned in favour of his grandfather under the provisions of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961.



He would further claim that the second respondent had highhandedly and illegally trespassed into the petition mentioned lands.

3. Interim order was granted in favour of the petitioner on 12.01.2023. I must place on record that the learned Standing counsel appearing for Kumbakonam Municipality vehemently opposed the granting of interim order. Taking note of the opposition, I listed the matter today to enable the second respondent to file their counter. The counter affidavit has been filed. The typed set of papers has also been filed.

4. It is seen from the materials enclosed in the typed set of papers that the writ petitioner's uncle's son Thiru.R.Ashok Kumar filed W.P.(MD)No.11839 of 2014 before this Bench seeking the very same relief that is now sought. A learned Judge of this Court vide Order dated 22.07.2014 disposed of the writ petition in the following terms:-

“ 3.The petitioner would state that the lands in question were the subject matter of assignment proceedings in favour of the



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Aranmanai Raman Chettiar Dharma Chatram represented by Trustee Thiru.A.V.Rajagopala Iyer and the petitioner grandfather was a cultivating tenant under the said Chatram and in enjoyment of the said property. It appears that assignment orders were issued by the Additional Authorized Officer, dated 19.11.1976.

4.By referring to the said proceedings, the learned counsel appearing for the petitioner would contend that the Kumbakonam Municipality made a claim for a portion of the property to an extent of 7.53 acres, which was held for the purpose of constructing buildings for the Municipal Employees Co-operative House Building Society, Kumbakonam. The Government, by memo, dated 31.07.1976, rejected the claim made by the Municipal Employees Co-operative House Building Society. Now, the petitioner fears that the third respondent will interfere with the petitioner's



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possession and enjoyment over the property. However, there is no notice issued by the Municipality nor any proceedings initiated for evicting the petitioner and there is no document produced to show that the apprehension of the petitioner, is reasonable.

5.The learned Government Advocate appearing for the respondents would contend that as per the Town Survey Register, the land in question has been classified as Cirkar Ubari Nilam.

6.In the light of the above facts, if the petitioner claims to be in possession of the property through a land proceeding of the competent authority under the provisions of the Land Reforms Act, then it is always open to him to protect his possession in the manner known to law. Since the petitioner has not been able to establish that his apprehension is reasonable, the question of issuance of writ of mandamus to the third respondent, as sought for, cannot be



granted. However, the issue regarding the petitioner's possession is left open and in the event of interference by any third party, it is open to the petitioner, to approach the appropriate form for necessary reliefs.

7. With the above observations, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.”

5. Thereafter, the writ petitioner's brother Thiru. Manimaran filed O.S.No.140 of 2014 on the file of the Additional Sub Court, Kumbakonam, seeking the relief of permanent injunction in respect of the petition mentioned lands. During the pendency of the suit, Manimaran passed away and his legal heirs came on record. The suit was dismissed on 23.03.2018 in the following terms:-

“1. that the suit is be and hereby is dismissed.

2. that there is no order as to cost.

3. However this Court made it clear that finding rendered in this suit will not have any



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bearing in connection with any proceedings pending or proposed to be initiated by the plaintiffs or any other persons with regard to the suit property before the competent authorities under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 1961.”

6. When in respect of the very same property against Kumbakonam Municipality, the writ petition as well as the civil suit had concluded in the manner mentioned above, it would not be appropriate for this Court to take a contra view. I must place on record the contention of the learned Standing counsel appearing for Kumbakonam Municipality that on account of the failure on the part of the petitioner's father to pay the amount in question, the property had been handed over by the Government to the Municipality. The learned counsel appearing for the writ petitioner would of course controvert this contention. When there is a factual dispute as to who is in possession, it is not appropriate for this Court to interfere in the matter.



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7. Leaving open all the rights of the parties, this writ petition stands disposed of. The interim order granted earlier is vacated. No costs. Consequently, connected miscellaneous petition is closed.

19.01.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

To:

1. The District Collector,
O/o.The District Collector,
Thanjavur District.
2. The Commissioner,
O/o.The Commissioner,
Kumbakonam Municipal Corporation,
Kumbakonam,
Thanjavur District.



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9

W.P.(MD)NO.800 OF 2023

G.R.SWAMINATHAN,J.

PMU

W.P.(MD)No.800 of 2023

19.01.2023



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10

W.P.(MD)NO.800 OF 2023