



W.P(MD)No.3128 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:26.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD).No.3128 of 2023
and WMP(MD)Nos.2908, 6704 of 2023

Nithya

... Petitioner

Vs

1. The Executive Officer,
Pannaikadu Town Panchayat,
Kodaikanal Taluk, Dindigul District.

2. S.Manivannan

... Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned order, dated 06.02.2023 passed by the first respondent in his proceedings Na.Ka.No.32/2023 and quash the same.

For Petitioner

:Mr. C.Mayilvahana Rajendran

For R1

:Mr.D.Sadiq Raja
Additional Government Pleader

For R2

:Mr.P.Karthick



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ORDER

The writ petition has been filed in the nature of Certiorari, questioning the orders passed by the first respondent/Executive Officer in Pannaikadu Town Panchayat, Kodaikanal Taluk, Dindigul District, dated 06.02.2023.

2.The writ petitioner and the second respondent are relatives. Owing to various reasons, the second respondent, his mother, brother and sister had filed a suit in O.S.No.69 of 2016, against the father of the writ petitioner herein, which is now pending before the District Munsif Court, Kodaikanal. That suit was filed seeking permanent injunction, restraining the defendant therein from interfering with the peaceful possession of the plaintiffs in the suit property therein. The suit property had been described as land in S.No.1049/18, new survey number 1184/2, in joint Patta number 1187 measuring 49 cents, out of a larger area of 0.25.5 hectares in Dindigul District. The four boundaries were also given.

3.According to the learned counsel for the second respondent, the suit had been filed on 02.06.2016. After the institution of the suit, the father



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of the petitioner herein had executed a partition deed and allotted the property to the petitioner herein, who then commenced construction. Aggrieved by that construction, the second respondent had filed a complaint before the first respondent claiming that the construction should be stopped and necessary action should be taken. On receipt of the complaint, the first respondent had passed the impugned order.

4. That impugned order is questioned by the learned counsel for the petitioner stating that the impugned order was passed by the first respondent, without serving notice to the petitioner. By the impugned order, the construction which had been commenced by the petitioner was directed to be stopped. Claiming that this had caused prejudice to the petitioner, the writ petition has been filed seeking to quash the impugned order

5. The learned Single Judge at the time of admission of the writ petition, had passed the following order on 16.02.2023:

“2. There shall be an order interim stay. I make it clear that I have granted interim stay only for the reason that no restraint order has been obtained by the second respondent from the jurisdictional Civil Court. If the second respondent succeeds in



obtaining interim order against the petitioner or against the first respondent in the pending suit, this order will necessarily abide by the same.”

6.The second respondent claimed that the said order seriously prejudiced him and therefore, had filed a petition to vacate the interim stay in WMP(MD) No.6704 of 2023.

7.Heard the learned counsel for the petitioner, learned Additional Government Pleader for the first respondent and the learned counsel for the second respondent.

8.The facts as stated above had been reiterated by the learned counsels. This is a dispute purely between the petitioner on the one hand and the second respondent on the another hand. In between that particular dispute, the first respondent had passed the impugned order, now questioned in this writ petition.

9.This Court cannot give any relief to the second respondent, even though a vacate stay petition had been filed, because the second



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respondent along with his mother, sister and brother had already instituted a suit. After the institution of said suit, the partition deed had been executed and construction had been put up in the property by the writ petitioner.

10.The second respondent having the suit as a base, can file interlocutory applications as law provides for the same and can amend the reliefs sought, in manner known to law. These aspects can be examined only by the District Munsif, Kodaikanal. The second respondent therefore, even without any liberty from this Court, may take a decision to protect his right and the right of his mother, brother and sister before the said Court.

11.Independently, the impugned order is set aside, which was issued by the first respondent without serving notice to the petitioner.

12.A direction is given to the first respondent to issue notices to both the petitioner and the second respondent, examine the representation given by them, give opportunities to advance their submissions and thereafter, pass a considered order. The first respondent may therefore issue notices to the petitioner and second respondent in the **second week of May, 2023** and



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pass orders on or before **15.06.2023**.

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13.No further direction can be issued, since it is a dispute purely between the petitioner and the second respondent. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

26.04.2023

NCS :Yes/No
Index :Yes/No
Internet:Yes/No
PNM

To

1. The Executive Officer,
Pannaikadu Town Panchayat,
Kodaikanal Taluk, Dindigul District.



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C.V.KARTHIKEYAN, J.

PNM

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