



C.M.P.(MD)No.2329 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.02.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.P.(MD)No.2329 of 2023

in

C.R.P.(MD)SR No.12641 of 2023

M.Michael

... Petitioner

Vs.

1.The Tashildar,
Bodinayakanur,
Theni District.

U.Kalimuthu (Deceased)

Muniyandi (Deceased)

U.Arumugam (Deceased)

2.Veerammal

3.Irulayiammal

4.P.Paraman

5.Ponnarasan

6.Paulraj

7.Ponmudi

8.Murugeshwari



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9.Parameshwari

10.Rajendran

11.Ayyapparaja

12.Sundari

13.Dhanabakkiyam

14.Pandiyarajan

15.Rajasekaran

... Respondents

PRAYER in C.M.P.(MD)No.2329 of 2023: Civil Miscellaneous Petition is filed under Section 151 of the Civil Procedure Code, to permit the petitioner to file CRP against the order of re-delivery dated 08.02.2023 in E.P.No.295 of 1997 in O.S.No.493 of 1989 on the file of the District Munsif Court, Bodinayakanur against the respondents 1 to 15.

PRAYER in C.R.P.(MD)SR No.12641 of 2023: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the order of re-delivery of possession passed in E.P.No.295 of 1997 in O.S.No.493 of 1989 dated 08.02.2023 on the file of the District Munsif Court, Bodinayakanur.

For Petitioner : Mr.R.Karunagaran

For Respondents : Mr.C.Baskaran

Government Advocate (R1)



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ORDER

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The present petitions have been filed by the third party challenging the order of delivery passed by the trial Court.

2. The respondents herein had filed O.S.No.493 of 1989 and the said suit was dismissed by the trial Court. On appeal in A.S.No.61 of 1991, a decree was granted in favour of the respondents / plaintiffs for demolition of building and recovery of possession. Based upon the said decree, the respondents / plaintiffs have filed E.P.No.295 of 1997 to execute the said decree, in which an order of delivery has been passed by the Execution Court on 08.02.2023.

3. According to the petitioner / third party, the said land is a government property. By way of collusion, the decree has been obtained. The property is being used by the general public of the village and the government authorities are very lethargic and they are not initiating any proceedings to stop delivery of possession. Hence, he had filed the present civil revision petition along with an application seeking leave of this Court to file the civil revision petition.



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4. It could be seen from the records that the government is not a party to the said suit. However, it is the contention of the learned counsel appearing for the petitioner / third party that the suit survey number is a government poramboke and by way of collusion, a decree has been obtained. He relied upon the order of the Division Bench of this Court in W.P.No.9380 of 2019 dated 11.03.2021, wherein the Tahsildar, Bodinayakanur has been directed to conduct an enquiry and pass an order regarding to the status of S.No.344/1. Pursuant to the said order, the Tahsildar, Bodinayakanur, has passed an order dated 04.09.2021 concluding that it is a government poramboke. Based upon these records, the petitioner, who is a third party to the suit, now seeks leave of this Court to file a civil revision petition to stop delivery of the property.

5. From the above said deliberations, it could be seen that the civil revision petition is said to be framed as Public Interest Litigation. In case the petitioner feels that the government property is being encroached upon or possession is being taken up by the private parties in collusion with the government authorities, it is for the petitioner to file



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an appropriate application to safeguard the government property before appropriate forum and hence question of granting leave in a civil revision petition as if it is a dispute among the private parties would not arise.

6. With the above said liberty, leave is rejected and the Civil Miscellaneous Petition is dismissed accordingly and consequently, the Civil Revision Petition is rejected.

23.02.2023

NCC : Yes / No
Index : Yes / No
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To

1.The District Munsif Court, Bodinayakanur.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
C.M.P.(MD)No.2329 of 2023
in
C.R.P.(MD)SR No.12641 of 2023

Dated:
23.02.2023