



W.P.(MD) No.5037 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.5037 of 2023

J.Suresh

... Petitioner

Vs.

The Deputy Commissioner/Executive Officer,
Arulmigu Kallagar Thirukovil,
Kallagar Kovil,
Madurai District.

... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records in impugnd order in Na.Ka.No.1370/2014/Aa1-1, dated 27.02.2023 on the file of the respondent and quash the same as illegal and consequently forbearing the respondent from interfering the petitioner's peaceful possession and enjoyment over property in S.No. 85/1B, Vallayampatti Village, Madurai District.

For Petitioner : Mr.S.Kumar

For Respondent : Mr.K.R.Laxman,
Standing Counsel



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ORDER

The writ petition has been filed seeking to quash the order passed by the second respondent in his proceedings in Na.Ka.No. 1370/2014/Aa1-1, dated 27.02.2023 and consequently, forbear the respondent from interfering with the petitioner's peaceful possession and enjoyment over property in S.No.85/1B, Vallayampatti Village, Madurai District.

2.The petitioner's contention is that his father was in possession of the property comprised in R.S.No. 85/1B measuring 3 cents and assignment patta was granted to him. One R.V.S.mani was in occupation of the land situated to the immediate east of the petitioner's father's property in Survey No.85/1B. The said R.V.S.Mani, who was also the petitioner's father's relative was permitted by his father to occupy the land alongside his land. Till 2005, there was absolutely no disturbance to the enjoyment of the property by the petitioner's father and others. However in the year 2005, the official respondents came with the bulldozer and poclain and attempted to demolish the building. The



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petitioner's father had shown all the documents, which was however not considered, constraining the petitioner to file WP(MD) No.47134 of 2005 on the file of this Court. On 01.06.2005, the writ petition was ordered, with a direction that the impugned order would be treated as a show cause notice and respondents after hearing the petitioner shall follow the procedure to dispose of his representation. After the father's death, the brothers have been in joint enjoyment of the property.

3. While so, on 09.01.2015, once again the revenue officials had attempted to evict the petitioner and the same was resisted by the petitioner and his brother. The petitioner and his brother had sent representation on 11.01.2015 and sought to restrain the respondent from interfering with the peaceful possession and enjoyment of the property. Once again, this Court's jurisdiction was invoked in WP(MD)No.2878 of 2015. This Court directed that notice dated 12.02.2015 should be treated as show cause notice and directed the petitioner to give an explanation. A detailed explanation was also given on 21.02.2015 and no further coercive action was taken by the respondents. The petitioner's brother died on 10.12.2021 and once again, a notice dated 27.02.2023 has been



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issued directing the petitioner to hand over possession of the property.

Assailing this order, the petitioner has filed the writ petition.

4. Though this Court had directed that the order should be passed after hearing the petitioner, a reading of the impugned order, clearly indicates that this direction has been observed in breach.

5. The learned Standing counsel for the respondent fairly conceded that there is an error in the order impugned.

6. Therefore, the impugned order dated 27.02.2023 is set aside and shall be treated as a show cause notice and the petitioner can submit a detailed explanation with the documents. It is made clear that till such time as the representation of the petitioner is not considered and orders passed, no coercive action shall be taken by the respondents. Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

09.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No



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To

The Deputy Commissioner/Executive Officer,
Arulmigu Kallagar Thirukovil,
Kallagar Kovil,
Madurai District.



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P.T.ASHA, J.

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