



W.P.(MD)No.9778 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 19.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.9778 of 2021
and
W.M.P.(MD)No.7507 of 2021

1.Robert

2.Gracy Bai

... Petitioners

Vs.

1.The District Collector,
Kanyakumari District,
Nagercoil.

2.The Special Officer,
Choozhal Village Panchyat,
Choozhal,
Kanyakumari District.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, prohibiting the respondents from demolishing any portion of the building located in Door No.4-47, Immanuel Manthiram, Choozhal, Kollancode, Kollancode P.O., Kanyakumari District.

For Petitioner : Mr.J.Anandhavalli

For Respondents : Ms.Farjana Ghoushia

Special Government Pleader



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ORDER

This Writ Petition has been filed for the issue of writ of mandamus forbearing the respondents from demolishing any portion of the building belonging to the petitioners situated in Door No.4-47, Immanual Manthiram, Choozhal, Kollancode, Kollancode P.O., Kanyakumari District.

2.The case of the petitioners is that the subject property was purchased by the first petitioner through the registered sale deed dated 25.09.1980. By virtue of this sale deed, an extent of 35 cents was purchased with building. Thereafter, the petitioners had refurbished the property and had also put up the compound Wall and was enjoying the property. The first petitioner settled a portion of that property in favour of the husband of the second petitioner through the registered gift deed, dated 26.06.1984.

3.The further case of the petitioners is that the husband of the second petitioner died during the year 2007 leaving behind the second petitioner and his daughter and son. The daughter of the second petitioner got married and the second petitioner along with her son were living in the subject property. The legal heirs of the vendor of the first petitioner filed a suit in O.S.No.498 of



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2010 before the District Munsif Court, Kuzhithurai seeking for the relief of declaration of their right, title and possession in respect of 620 sq.links on the ground that the first petitioner had encroached upon this portion of the property. The suit was pending and in the meantime the property that was gifted in favour of the husband of the second petitioner was sub divided into Sy.No.70/A2.

4.The grievance of the petitioners is that during the month of March, 2020, the Village Administrative Officer had visited the property and informed the petitioners that they have encroached upon two cents in the Panchayat property. The petitioners took a stand that they are in possession and enjoyment of the property that was purchased by them to an extent of 34.500 sq.links.

5.One Yesudhas filed a Public Interest Litigation before this Court alleging that the petitioners have encroached upon the public property and had put up a compound Wall. In that writ petition, the petitioners were arrayed as third and fourth respondents. That writ petition came to be disposed of by this Court by order dated 05.03.2018 in the following terms:

“ 3.The petitioner's case is that the said property was owned by one Elias, who executed a gift deed in favour of the second respondent Panchayat dated 10.08.1978, registered as



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Document No.1535/1978 on the file of the Sub Registrar Office, Kollencode. The purpose of the gift was to dig a Well in the said property to cater to the needs of drinking water of the people of the Village. However, the petitioner would state that the respondents 3 and 4 have encroached into the land and put up a compound wall. Since we are disposing of the writ petition without notice to the respondents 3 and 4, we are not inclined to issue any positive direction at this stage of the matter and it would suffice to direct the second respondent to take note of the petitioner's complaint and proceed in accordance with law.

4.In the light of the above observation, without going into the merits of the petitioner's claim ie., whether there is encroachment or not, we direct the second respondent to look into the petitioner's representation dated 27.10.2017 and consider the same and send an appropriate reply to the petitioner, within a period of two weeks from the date of receipt of a copy of this order. If the second respondent finds that there is any encroachment made by the respondents 3 and 4 or any other party in any part of the land vested with the Panchayat, proper action shall be initiated against them, after issuing notice to the said parties. No costs."

6.Pursuant to the above order, the petitioners gave detailed objections stating that they have not made any encroachment upon the public property and that the compound Wall has been constructed within their property. Whiles, steps were taken to demolish a portion of the property. Aggrieved over the



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same, the present writ petition has been filed before this Court.

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7. When the matter is came up for hearing on 17.10.2023, this Court directed the learned counsel appearing on either side to take instructions regarding the present status of the property. This was in view of the fact that no interim order was passed by this Court, when the writ petition was entertained. Accordingly, the matter was directed to be posted for hearing today.

8. When the matter is taken up for hearing today, the learned counsel for the petitioners submitted that till date, no portion of the property has been demolished and it remains intact till date.

9. In light of the above submissions made by the learned counsel for the petitioners, it will suffice if a direction is given to the respondents to the effect that if any steps are going to be taken for demolition of any portion of the property belonging to the petitioners, they shall be issued a notice by the respondents and their explanation shall be sought for and thereafter, action shall be taken strictly in accordance with law. This direction will sufficiently take care of the grievance expressed by the petitioners.



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10.This writ petition is disposed of in the above terms. No costs.

Consequently, connected miscellaneous petition is also closed.

19.10.2023

NCC : Yes / No

Index : Yes/No

Internet : Yes/No

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To

1.The District Collector,
Kanyakumari District,
Nagercoil.

2.The Special Officer,
Choozhal Village Panchyat,
Choozhal,
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N.ANAND VENKATESH, J.

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