



W.P.(MD) No.11465 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.05.2023

CORAM:

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD) No.11465 of 2023

and

W.M.P.(MD) Nos.9951, 9953 and 9955 of 2023

V.H.Sivakumar

.. Petitioner

Vs

1.The District Collector,
Kanyakumari District,
at Nagercoil.

2.The Thirparappu Selection Grade Panchayat,
Rep., by Executive Officer,
Thirparappu, Kanyakumari District.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent pertaining to its proceeding in Na.Ka.No.463/22/A1 dated 19.04.2023 and to quash the same and consequently directing the respondent to permit the petitioner to cut and remove the rubber trees planted by the mother of the petitioner which are available in the properties in Re-survey Nos.496/1 and 496/3 of Thumbacode Village, Kanyakumari District.



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For Petitioner : Mr.S.C.Herold Singh
For Respondents : Mr.R.Baskaran
Additional Advocate General
assisted by Mr.V.Nirmalkumar
Government Advocate

ORDER

Heard Mr.S.C.Herold Singh, learned counsel appearing for the petitioner and Mr.R.Baskaran, learned Additional Advocate General assisted by Mr.V.Nirmalkumar, learned Government Advocate for the respondents.

2. The petitioner questions the impugned auction notice issued by the second respondent. The second respondent has invited applications from prospective bidders to cut and remove the rubber trees standing in the petition mentioned survey numbers. It is seen that the petitioner's mother Hemakumari filed O.S.No.722 of 1994 on the file of the Additional District Munsif's Court, Padmanabhapuram, seeking the relief of declaration as well as permanent injunction in respect of the petition mentioned lands. The suit was dismissed vide judgment and decree



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dated 05.09.1996. Subsequently, she filed yet another suit in O.S.No.248 of 2001 on the file of the Additional District Munsif's Court, Padmanabhapuram. That was also dismissed. Questioning the same, she filed A.S.No.80 of 2004 on the file of the Sub Court, Padmanabhapuram. The first appellate Court confirmed the decision of the trial Court. Challenging the same, she filed S.A.(MD) No.275 of 2009 before this Court, which was also dismissed on 26.08.2019. Thus, the petitioner and his family have no right whatsoever on the petition mentioned lands. On account of the dismissal of the suits filed by the petitioner's mother, it is now declared that the petition mentioned lands belong to the Government.

3. The only question that falls for consideration is whether the respondents are entitled to cut and remove the trees.

4. The stand of the petitioner is that the rubber trees were planted by his family and that therefore, he is entitled to cut and remove the same.



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5. It is well settled that if a tree has been planted, maintained and grown by an individual, it would belong only to him and not to the owner of the land. Even though the respondents would strongly assert that the trees were planted by the Government/Local Body, no proof is forthcoming. At this stage, the learned Additional Advocate General, in the alternate, would argue that the petitioner, having been in unlawful possession of the lands, is bound to pay for use and occupation.

6. I am of the view that a via media solution can be arrived at. Even though the suits filed by the petitioner's mother were dismissed still, the respondents cannot take over the property straightaway. They will have to necessarily follow due process of law. There is nothing on record to show that the respondents had ever taken over possession of the property. At this stage, the learned counsel appearing for the petitioner, on instructions, states that the petitioner would remit a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) to the credit of the Local Body within a period of two weeks from the date of receipt of a copy of this order and that he may be permitted to cut and remove the trees. The



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petitioner also undertakes to handover possession of the lands in question to the second respondent within a period of four weeks.

7. Recording the aforesaid undertaking of the writ petitioner, I permit the respondents to take possession of the lands without issuance of any further notice or proceedings on the expiry of four weeks from today. If the petitioner fails to remit the sum of Rs.2,00,000/- (Rupees Two Lakhs only) within a period of two weeks as undertaken above, it would be open to the respondents to cut and remove the trees on their own.

8. The Writ Petition is disposed of with the above observations and directions. No costs. Consequently, connected miscellaneous petitions are closed.

11.05.2023

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

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G.R.SWAMINATHAN, J.

abr

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