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W.P.(MD)NO.19993 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 23.11.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.19993 of 2023 AND
W.M.P.(MD)No.16493 of 2023

1. Kamar Nisha Begam

2. Umar Mukthar

... Petitioners

Vs.

1. The Commissioner,
Madurai Corporation,
Madurai.

2. A.Maboob Ali @ Abhuthahir

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in 115/BL/2023/00047 dated 06.01.2023 on the file of the first respondent and quash the same as illegal and consequently for a direction, directing the first respondent not to give any permission to construct or demolish the property till the disposal of the civil suit in O.S.No.87 of 2023 which is pending before the V Additional District Judge, Madurai.

For Petitioner : Mr.E.Mohamed Abbas

For R-1 : Mr.K.Sivabalan,
Standing Counsel.

For R-2 : Mr.V.M.Jagadeesh Pandian

* * *



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ORDER

Heard both sides.

2. The first petitioner's husband is no more. Late Sulthan Ibrahim and the second petitioner were siblings. The second petitioner is the son of the first petitioner. The case of the writ petitioners is that there were five row houses having common door number in new door No.7 old door No.22, Ansari Nagar, S.S.Colony, Madurai. The petitioners' case is that there was an oral partition in the year 1985 among the family members and that the first of the row houses was allotted in favour of Late.Sulthan Ibrahim.

3. The stand of the second respondent is that the entire property belonged to the mother John Beevi, W/o.Abdul Kadar Saibu and that she had gifted the property in favour of the second respondent in the year 2006. According to the second respondent, the properties have become dilapidated and that is why, he had obtained demolition order from Madurai Corporation and also building plan approval for putting up a new construction.



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4. It is apparent that one of the five row houses is in the possession of the petitioners herein. Therefore, the first respondent could not have passed the demolition order without notice to the petitioners herein. To this extent, the impugned order warrants interference.

5. First of the five row houses is in the petitioners' possession shall not be demolished or otherwise interfered with by the second respondent till the civil Courts decide the issue. At present, two suits are pending in O.S.Nos.87 of 2023 on the file of the V Additional District Judge, Madurai and O.S.No.550 of 2022 on the file of the Additional District Munsif Court, Madurai. The impugned order will not have any bearing in respect of the first of the five row houses mentioned above. The impugned order is set aside to this limited extent. This writ petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

23.11.2023



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NCS : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU

G.R.SWAMINATHAN,J.

PMU

To:

The Commissioner,
Madurai Corporation,
Madurai.

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