



1

W.P.(MD)NO.21917 OF 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.03.2023

PRONOUNCED ON : 22.06.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.21917 of 2021

S.Atchaya

... Petitioner

Vs.

1. The District Collector,
O/o.the District Collector,
Theni District, Theni.
2. The Assistant Director,
Theni District Town and Country Planning Office,
Theni, Allinagaram,
Theni District.
3. The Assistant Director(Town Panchayat),
Boothipuram,
Theni District – 625 531.
4. The Palanichettipatti Executive Officer(E.O),
Palanichettipatti Town Panchayat Office,
Palanichettipatti,
Theni District – 625 531.
5. V.T.Narayanasamy

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the



respondents 2 and 4 from giving planning permission in respect of the land in survey Nos.1433/1, 1434/3, 1471/6 situated in Veerapandi Village, Palanichettipatti Town Panchayat, Theni Taluk, Theni District in favour of the fifth respondent or any other persons in view of the decree in O.S.No.12 of 2017 on the file of the Additional District Judge, Fast Track Court, Theni.

(Prayer is amended vide order dated 19.01.2023 in W.M.P. (MD)No.712 of 2023.)

For Petitioner	: Mr.R.Suriyanarayanan
For R-1 to R-3	: Mr.A.K.Manikkam, Special Government Pleader.
For R-4	: Mr.N.Ramesh Arumugam, Government Advocate.
For R-5	: Mr.M.Sricharan Rangarajan, Senior counsel, for Mr.C.Jeganathan.

* * *

ORDER

The petitioner herein had filed W.P.(MD)No.618 of 2022 challenging the order dated passed by the District Revenue Officer, Theni dismissing her revision petition. The petitioner had questioned the mutation effected in favour of the fifth respondent herein. The specific stand of the petitioner is that her aunt Ms.Latha had executed a Will



dated 31.01.2005 in her favour. She further contended that Latha had filed O.S.No.12 of 2017 before the District Court, Theni for partition and permanent injunction and that on 03.11.2018, a preliminary decree was passed in her favour and injunction was also granted. Questioning the same, V.T.Narayanasamy filed A.S.(MD)No.74 of 2019 before this Court and it is still pending. The said writ petition was disposed of by me in the following terms:-

“ 9. The stand of the petitioner's counsel is anchored on the preliminary decree dated 03.11.2018 made in O.S.No.12 of 2017 in favour of Latha. The stand of the contesting respondents is that Latha executed a Will dated 19.11.2019 in favour of her niece Oviya, D/o.Late Kannan. The learned counsel appearing for the contesting respondent would claim that through his Will, Latha had cancelled her earlier Will dated 31.01.2005 executed in favour of the petitioner herein. Latha passed away on 28.11.2019. The issue turn on whether the Will dated 31.01.2005 executed in favour of the petitioner is still holding good or it has been superceded by the subsequent Will dated 19.11.2019. The petitioner's counsel would



contend that the subsequent Will projected by the contesting respondent is not genuine.

10. These are factual aspects. Neither the revenue Court nor the writ Court can go into this controversy. Admittedly, the petitioner has already initiated civil proceedings. The rights of the parties will abide by the outcome of the same. The revenue authorities were justified in holding their hands back. It is for the parties to establish their respective claims before the jurisdictional civil Court. Granting liberty to the petitioner to pursue her remedy in the pending civil proceedings, this writ petition stands disposed of. No costs.”

2. In the meanwhile, the fifth respondent had approached the planning authorities for granting planning permission in respect of the petition mentioned lands.

3. The question that calls for consideration is whether the restraint order as prayed for by the petitioner should be granted. The learned counsel appearing for the petitioner reiterated all the contentions



set out in the affidavit filed in support of the writ petition. His core argument is that the title of the fifth respondent is under cloud and that he is yet to establish his title over the property.

4. I do not want to go into the merits of the matter. Admittedly, the petitioner has instituted a civil suit in O.S.No.61 of 2020. The petitioner can very well pursue her remedy in the pending proceedings. If according to the petitioner the decree granted by the civil Court has been breached, she can even file a contempt petition. The prime reason for my declining to interfere in the matter in the writ proceedings is that the probate O.P. filed by the petitioner was directed to be tried as a suit(renumbered as O.S.No.206 of 2022) along with O.S.No.121 of 2021. The learned Senior counsel appearing for the fifth respondent would contend that the petitioner had received benefit under Clause 7 of the disputed Will. The transaction details have also been furnished in the written submissions. The learned Senior counsel would contend that a person who derived benefit under a Will cannot contest the same. It is strongly argued that in view of the execution of the Will in favour of Oviya by Latha earlier, the decree has been totally undermined. It is also pointed out that the petitioner has not obtained any interim order in her



favour in the pending civil suits. In these circumstances, the petitioner has to necessarily work out her remedy in the pending civil proceedings.

In any event, the rights of the parties will abide by the outcome of the suits. Granting liberty to the petitioner to pursue her remedy in the pending suits, this writ petition stands disposed of. No costs.

22.06.2023

Index : Yes / No

Internet : Yes/ No

PMU

To:

1. The District Collector,
O/o.the District Collector,
Theni District, Theni.
2. The Assistant Director,
Theni District Town and Country Planning Office,
Theni, Allinagaram,
Theni District.
3. The Assistant Director(Town Panchayat),
Boothipuram,
Theni District – 625 531.
4. The Palanichettipatti Executive Officer(E.O),
Palanichettipatti Town Panchayat Office,
Palanichettipatti,
Theni District – 625 531.



WEB COPY



7

W.P.(MD)NO.21917 OF 2021

G.R.SWAMINATHAN,J.

PMU

W.P.(MD)No.21917 of 2021

22.06.2023