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WP.No.1930 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

WP.No.1930 of 2024

V.Devaraj

Petitioner

Vs

1. The District Collector, Perambalur
2. The Revenue Divisional Officer, Perambalur
3. The Tahsildar, Perambalur
4. The Block Development Officer, Perambalur
5. P.Dasarathan

6. D.Vatsaladevi

Respondents

Prayer:- This Writ Petition has been filed, under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the Respondents 1 to 4 to demolish the illegal construction made by the Respondents 5 and 6 in the property of the Petitioner in S.No.382/2 (Old S.No.267/20), measuring 5 cents of Kalarampatti Village, Perambalur Taluk and District.



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For Petitioners : Mr.M.Kalyana Sundaram, SC

For Respondents : Mr.M.R.Gokul Krishnan, AGP-RR1 to 3
Mr.V.Govardhanan-RR5 and 6
Mr.M.Alagu Goutham, GA-R4

ORDER

(Order of the Court was made by S.S.SUNDAR, J.)

1. This Writ Petition has been filed to issue a Writ of Mandamus, directing the Respondents 1 to 4 to demolish the illegal construction made by the Respondents 5 and 6 in the property of the Petitioner in S.No.382/2 (Old S.No.267/20), measuring 5 cents of Kalarampatti Village, Perambalur Taluk and District.
2. This Court heard the learned counsel on either side, considered their submissions and also perused the entire materials placed on record.
3. The Petitioner claims to be the owner of the Petition mentioned property. It is the case of the Petitioner that the property belonged to his family and the Tahsildar granted patta in the name of his mother, namely, Thethiammal, in recognition of her possession and that after the demise of his mother in the year 1993, he is in possession of the property. It is the further case of the Petitioner that the 5th Respondent, along with his family members, including his father, by name



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Palaniandi, claiming title to the property, has filed a suit in OS.No.841 of 1993 against the Defendants 1 and 2, who are the Petitioner herein and his wife, before the District Munsif Court, Perambalur and the said suit was dismissed on 21.10.2019.

4. It is further stated that the appeal filed in AS.No.10 of 2010 filed by the Plaintiffs was also dismissed on 31.10.2023. The further allegation is that the 4th Respondent has given permission to the 5th Respondent to construct a house in the property under the Prime Minister Yojana Scheme, despite the objection raised by the Petitioner and that the 5th Respondent also obtained the benefit of financial assistance under the Prime Minister Yojana Scheme for putting a house in the name of the 6th Respondent, who is none other than the wife of the 5th Respondent. Hence, the Petitioner issued a legal notice dated 12.12.2023. Thereafter, it appears that the Petitioner has filed a Writ Petition in WP.No.36170 of 2023, seeking police protection to enter into the property and the said Writ Petition was disposed of, with the following directions:-

“The fourth Respondent is directed to conduct an enquiry keeping in view the judgement of the Honourable Supreme Court in Lalitha Kumari Vs. Government of Uttar Pradesh (2013 6 CTC 353), wherein the Honourable Supreme Court has enumerated the nature of cases where preliminary enquiry can



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be conducted and has also restricted the period, for which preliminary enquiry can be conducted. The fourth Respondent is also directed to complete the enquiry in the case and take a decision within a period of two weeks from the date of receipt of a copy of this order.”

5. On the basis of the order obtained from this Court in the said Writ

Petition, the Petitioner has now approached this Court, seeking a direction to the Official Respondents to demolish the illegal construction put up by the 5th Respondent.

6. The learned senior counsel for the Petitioner has produced before this

Court a copy of the judgement passed in OS.No.841 of 1994. It is true that the father of the 5th Respondent, by name, Palaniandi, along with his family members, appears to have filed the suit in OS.No.841 of 1994 for declaration of title in their favour and for consequential permanent injunction, restraining the Defendants therein, who are the Petitioner herein and his wife, from interfering with their peaceful possession and enjoyment of the property.

7. The case of the 4th Respondent is that the suit property belonged to the

1st Defendant, who is the Petitioner herein and the Petitioner/1st Defendant had erroneously executed the settlement deed in favour of his wife, the 2nd Defendant. Though the Respondents 5 and 6 herein are



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described as rank trespassers, the Petitioner has not filed any suit for recovery of possession. However, it is true that the suit filed by the 5th Respondent and his father in OS.No.841 of 1994 was dismissed, holding that the property though originally belonged to the Government, has been assigned in favour of the Petitioner, who is the 1st Defendant in the said suit. Since the 1st Defendant had executed a settlement deed in favour of the 2nd Defendant, who is the wife of the Petitioner herein, the suit was dismissed and the appeal filed in AS.No.10 of 2019 by the Plaintiffs was also dismissed by judgement and decree dated 31.10.2023. It is further stated by the learned counsel for the Respondents 5 and 6 that a second appeal filed by them is pending before this Court.

8. Even though the civil Court has rendered a finding in favour of the Petitioner that the property is the property of the Government and the same was assigned in favour of the Petitioner's mother, this Court is unable to accept the contention that the construction put up by the Respondents 5 and 6 is on the basement put up by the Petitioner. The Petitioner has not stated in the affidavit filed in support of this Writ Petition though he has stated so in the representation submitted by him



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before the Revenue Authorities.

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9. Be that as it may. The Petitioner is not in possession of the property and he has not filed any suit for recovery of possession as against the alleged trespassers, namely, the Respondents 5 and 6. Merely because the Petitioner's title is recognised in the suit filed by the 5th Respondent along with his family members, that will not enable the Petitioner to secure possession. Even if the construction put up by the private Respondents are unauthorised, this Court cannot grant a decree for recovery of possession merely because the construction put up by the Respondents 5 and 6 is not in accordance with the plan. Except the allegation that the private Respondents have put up construction in the property of the Petitioner, there is no allegation in the Writ Petition that the construction put up by the private Respondents is not in accordance with the building regulations or in deviation of the building regulations. Even though the Petitioner is entitled to seek possession in a manner known to law, the Petitioner cannot claim to be in lawful possession and to get an order for demolishing the building. The Petitioner wants to secure possession by way of this Writ Petition, which can be obtained only by resorting to the civil Court for recovery of possession.



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10. In view of the statement of the learned counsel for the private Respondents that a second appeal is also pending, this Court cannot go into the issue of title as on date. Since the contention of the Petitioner that the 5th Respondent had put up construction on the basement put up by the Petitioner is not proved, this Court, for a moment, is not inclined to entertain this Writ Petition. However, liberty is preserved to the Petitioner to file a suit for recovery of possession as against private Respondents.

11. In fine, this Writ Petition is disposed of, giving such liberty to the Petitioner, as stated above. No costs. Having regard to the admitted facts as on date, the Respondents 5 and 6 shall not proceed with further construction without any approved plan or until the title of the Respondents 5 and 6 is declared in their favour in the second appeal said to have been filed by them. The second appeal may be decided, uninfluenced by any of the observations made by this Court on the question of possession or title.

(S.S.S.R.J.) & (N.S.J.)
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S.S.SUNDAR, J.
and
N.SENTHILKUMAR, J.

Srcm

Index: Yes/No
Web: Yes/No
Speaking/Non Speaking
Neutral Citation: Yes/No
Srcm

To

1. The District Collector, Perambalur
2. The Revenue Divisional Officer, Perambalur
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