



WP.Nos.12766/2020 & 7898/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 29.01.2024

Delivered on 14.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

WP.Nos.12766/2020 & 7898/2021
and
WMP.Nos.15771/2020 & 8433/2021 in
WP.Nos.12766/2020 & 7898/2021

WP.No.12766/2020:-

S.Sivalingam

... Petitioner

Vs.

1.The Commissioner
Tiruppur City Municipal Corporation
Tiruppur.

2.The Assistant Commissioner
Zone No.3, Tiruppur City Municipal
Corporation, Tiruppur.

3.M.Murugesan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India



WP.Nos.12766/2020 & 7898/2021

for issuance of Writ of mandamus directing the 1st and 2nd respondents to take a positive appropriate action as against the 3rd respondent for unauthorised construction in view of building approval cancellation order passed by the 2nd respondent vide order dated 19.02.2020 in proceedings No.Ka.Ve.No.E1/247/2019/Z3.

For Petitioner	: Mr.K.Myilsamy
For RR1 & 2	: Mr.Abishek Murthy
	Standing Counsel
For R3	: Mr.Abrar Mohammed Abdullah

WP.No.7898/2021:-

M.Murugesan

... Petitioner

Vs.

1.The Commissioner
Tiruppur City Municipal Corporation
Tiruppur.

2.The Assistant Commissioner
Zone No.3, Tiruppur City Municipal
Corporation, Tiruppur.

3.S.Sivalingam

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorarified mandamus calling for the records relating to the Impugned Order in Ka.Vi.No.E1/247/2019/Z3 dated 19.02.2020 passed by the 2nd respondent and quash the same and further forbear the respondents from interfering with the petitioner's possession with respect to the property measuring to an extent of 807 ³/₄ sq.ft., and the buildings thereon comprised in Natham S.No.26B, Resurveyed as Survey No.576/12 situated at Muthanampalayam Village, K.Chettipalayam,



WP.Nos.12766/2020 & 7898/2021

Tiruppur District.

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For Petitioner	: Mr.Abrar Mohammed Abdullah
For RR1 & 2	: Mr.Abishek Murthy
	Standing Counsel
For R3	: Mr.K.Myilsamy

COMMON ORDER

S.S.SUNDAR, J.,

(1)WP.No.12766/2020 has been filed by the petitioner for issuance of a writ of mandamus to direct the 1st respondent / Commissioner, Tiruppur City Municipal Corporation and the 2nd respondent to take appropriate action against the 3rd respondent for the unauthorised construction in view of the Building Approval Cancellation order passed by the 2nd respondent dated 19.02.2020.

(2)The 3rd respondent in WP.No.12766/2020 has filed WP.No.7898/2021 for issuance of a certiorarified mandamus to quash the impugned order passed by the 2nd respondent dated 19.02.2020 and to forbear the respondents from interfering with the petitioner's possession with respect to the property measuring to an extent of 807 $\frac{3}{4}$ sq.ft., and the buildings thereon comprised in Natham S.No.26B, Resurveyed as Survey



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No.576/12 situated at Muthanampalayam Village, K.Chettipalayam, Tiruppur District.

- (3)The subject matter of these two writ petitions is one and the same and the parties are also the same. Hence, both the writ petitions are taken up together for hearing and are disposed of by this common order.
- (4)The petitioner in WP.No.12766/2020 is the 3rd respondent in WP.No.7898/2021 and the petitioner in WP.No.7898/2021 is the 3rd respondent in WP.No.12766/2020. Respondents 1 and 2 are common in both the writ petitions. Hence, the parties are referred to as per their litigating status in WP.No.12766/2020.
- (5)The dispute is in respect of a small extent of 732 sq.ft., comprised in S.No.26B, resurveyed as S.No.576/12 at Muthanampalayam Village, K.Chettipalayam, Tiruppur District.
- (6)It is admitted by the petitioners in both the writ petitions that the subject property originally belonged to one Tmt.Nallammal. It is also admitted that the said Nallammal, out of love and affection, executed a Settlement Deed in favour of her son Palanisamy by a registered Settlement Deed vide Doc.No.1544/1997 dated 29.05.1997. The said Palanisamy died



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intestate on 14.11.1997 leaving behind his mother Nallammal, his wife by name Eswari, his son Sathishkumar, and his daughter Dharani Divya as legal heirs. It is admitted that the mother, wife and children of Palanisamy are entitled to each 1/4th share as per the Hindu Succession Act.

(7)The 3rd respondent purchased the undivided 3/4th share out of the total extent of 732 sq.ft., from the wife, son and daughter of the said Palanisamy by a registered Sale Deed bearing Doc.No.12177/2018 dated 06.12.2018. The petitioner purchased the undivided 1/4th share in the same property from Smt.Nallammal, mother of Palanisamy by virtue of a registered Sale Deed bearing Doc.No.14303/2019 dated 20.12.2019. It is also admitted that the revenue records are jointly in the name of the petitioner and the 3rd respondent.

(8)The parties admit that the petitioner has filed a suit for partition in OS.No.36/2020 on the file of the District Munsif Court at Tiruppur against the 3rd respondent and the said suit is pending. The grievance of the petitioner is that the 3rd respondent commenced construction of a commercial shop in respect of the entire land measuring an extent of 732



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sq.ft., after obtaining a Building Plan Approval granted by the 2nd respondent vide proceedings dated 10.10.2019. Since the 3rd respondent suppressed before the 2nd respondent about the joint ownership, the petitioner submitted a representation before the 2nd respondent with a prayer to cancel the Building Plan Approval granted in favour of the 3rd respondent. It is also admitted that on receipt of the representation of the petitioner, the 2nd respondent, after conducting an enquiry and considering the title deeds of both sides, issued a notice to the 3rd respondent. Since the 3rd respondent failed to respond to the notice, the 2nd respondent came to the conclusion that the 3rd respondent had obtained the Building Plan Approval, suppressing the joint ownership and cancelled the Building Plan Approval granted in favour of the 3rd respondent vide proceedings dated 19.02.2020. The 2nd respondent also directed the 3rd respondent to stop the construction activities by issuing Demolition Notice for removal of unauthorised construction.

(9) Since the 3rd respondent proceeded with the construction, the petitioner submitted a representation to the Secretary to the Government as well as respondents 1 and 2 to take immediate action for demolition of



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unauthorised construction. It is stated by the petitioner in the affidavit filed in support of the writ petition in WP.No.12766/2020 that the 3rd respondent who proceeded with the illegal construction, created a Rectification Deed claiming right over the entire parcel of land to defeat the rights of the petitioner, the co-owner who is also entitled to the undivided 1/4th share in the property.

(10) In the first document, the 3rd respondent has purchased the undivided 3/4th share out of the total extent of 732 sq.ft., However, under the Rectification Deed, the 3rd respondent has rectified the document as if the original owner had more extent than the extent mentioned in the original Sale Deed. The petitioner stating that the 3rd respondent has put up construction fraudulently just to defeat the rights of the petitioner's 1/4th share, filed WP.No.12766/2020 with the prayer, stated above.

(11) The 3rd respondent filed WP.No.7898/2021 to quash the impugned order dated 19.02.2020 with a further prayer to direct the respondents not to interfere with his peaceful possession of the subject property. The 3rd respondent, in the affidavit filed in support of the said writ petition, stated that the original owners are entitled to an extent of 1077 sq.ft., and the 3rd



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respondent purchased 3/4th share, namely, an extent of 807 3/4 sq.ft., out of 1077 sq.ft. It is further contended by the 3rd respondent that he applied for Building Plan Approval for an extent of 807 3/4 sq.ft., and started putting up construction. Referring to the fact that the construction was commenced after obtaining Building Plan Approval, the 3rd respondent contended that the construction of the building was completed as per the Approved Plan and that he is also running a business in the property. The 3rd respondent further states that the petitioner is in possession of more than what he is entitled to as per the Sale Deed. The 3rd respondent has filed the writ petition challenging the Impugned Order passed by the 2nd respondent dated 19.02.2020, cancelling the Building Plan Approval granted to the 3rd respondent earlier vide proceedings dated 10.10.2019 and directing the 3rd respondent to stop construction. In the order impugned in the writ petition in WP.No.7898/2021 dated 19.02.2020, the 2nd respondent threatened to initiate proceedings for demolition of the building if the 3rd respondent does not stop the construction immediately.

(12)The order of the 2nd respondent is challenged in WP.No.7898/2021 mainly on the ground that the order has been passed in violation of



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principles of natural justice and that the building was constructed in accordance with the plan. It is contended by the 3rd respondent that he was not given sufficient opportunity to put forth his case. He specifically raised a ground that the Impugned Order was passed in a hurried manner without issuing a show cause notice to the 3rd respondent. The 3rd respondent also submitted a detailed reply after the Impugned Order was passed. It is therefore, contended by the 3rd respondent that the 2nd respondent has not considered the points raised by the 3rd respondent to withdraw the Impugned Order.

(13) Heard the learned counsel for the petitioners and the learned Standing counsel for respondents 1 and 2 in both the writ petitions and also perused the materials placed.

(14) In the present case, this Court finds that there is no factual issues. The property originally belonged to one Palanisamy, is not in dispute. After his death, the property devolved on his mother, wife and two children. All the four are entitled to equal 1/4th share. It is also not in dispute that the property is classified as Natham and as per the Natham Settlement, all the four legal heirs of Palanisamy was given joint patta vide Patta



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No.428. The total extent, according to this document, is 68 sq.m.

However, the 3rd respondent who has purchased the property from the wife and children of Palanisamy, ignoring the revenue record that was issued recently in favour of all four legal heirs of Palanisamy, has obtained a Rectification Deed to amend the schedule of property. It is to be noted from the original Sale Deed that the 3rd respondent has purchased 3/4th share out of total extent of 732 sq.ft. The undivided extent purchased by the 3rd respondent is also specifically referred to as 549 sq.ft. Whereas, in the Rectification Deed, the 3rd respondent and his vendor, changed the schedule by showing the property conveyed as 807 3/4 sq.ft., which is 3/4th share of the total extent of 1077 sq.ft.

(15) From the typed set filed by the 3rd respondent/petitioner in WP.No.7898/2021, it is also seen that the 3rd respondent has raised his objections even before the 2nd respondent passing the Impugned Order. Therefore, the 3rd respondent has in fact, had received the representation of the petitioner before the 2nd respondent for cancellation of Building Plan Approval and the 3rd respondent has made his written objections by a communication dated 14.02.2020.



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(16) From the Sale Deed, it is seen that both the petitioner and the 3rd respondent have purchased the undivided 1/4th and 3/4th shares respectively. It is a well settled that a co-owner having a fractional share, is entitled to exercise his right over every piece of land till such time a division takes place by metes and bounds. The parties have admitted that the petitioner has filed a suit for partition in OS.No.36/2020 for partition. The 3rd respondent also filed a suit in OS.No.103/2020 before the District Munsif Court, Tiruppur, for permanent injunction against respondents 1 and 2 herein from in any way proceeding further with the order dated 19.02.2020 which is impugned in WP.No.7898/2021.

(17) On the admitted facts, this Court is able to see that the 3rd respondent has put up construction by claiming ownership over a specific property without there being a partition. This Court, from the documents, is unable to justify the conduct of the 3rd respondent in putting up a construction.

(18) The learned counsel for the 3rd respondent / petitioner in WP.No.7898/2021 would state that the 3rd respondent has left substantial portion which is more than 1/4th of the property to which the petitioner is



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entitled to. This argument cannot be countenanced when joint ownership is admitted.

(19)The learned counsel for the petitioner in WP.No.12766/2020 states that that the 3rd respondent has put up his construction taking the advantageous frontage and the petitioner is therefore, deprived of his valuable rights in terms of his right to claim 1/4th share in the entire property having proportionate value.

(20)This Court tried to persuade the parties to agree for a settlement. However, the parties were not willing to amicably settle the issue.

(21)Though the petitioner and the 3rd respondent are co-owners, the 3rd respondent has unauthorisedly put up construction without the consent of petitioner and the construction is unauthorised, as far as the petitioner is concerned. Therefore, the Impugned Order cancelling the Building Plan granted in favour of 3rd respondent is perfectly valid and this Court, therefore, finds no valid reason or ground to interfere with the order cancelling the Building Plan Approval granted to the 3rd respondent. Since the building put up by the 3rd respondent is totally unauthorised, respondents 1 and 2 are bound to take appropriate action for removal of



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unauthorised construction in accordance with law. The prayer for injunction in the writ petition filed by the 3rd respondent is unsustainable as against the petitioner who is a co-owner.

(22)The suit filed by the 3rd respondent in OS.No.103/2020 on the file of the District Munsif, Tiruppur, restraining respondents 1 and 2 to take any action pursuant to the Impugned Order cancelling the Buildign Plan Approval, is without jurisdiction and therefore, there cannot be any credence that can be given to the pendency of such suit filed by the 3rd respondent as against official respondents. The 3rd respondent who has put up illegal and unlawful construction with an intention to deprive the legitimate right of the petitioner, cannot seek any protection under law in equity. Therefore, this Court finds no merit in the writ petition filed by the 3rd respondent namely, WP.No.7898/2021.

(23)In the result, **WP.No.12766/2020** filed by **Sivalingam** stands **allowed**.

The writ petition in **WP.No.7898/2021** filed by **Murugesan** stands **dismissed**.

(24)Since this Court has already held that the construction put up by the 3rd respondent is totally unauthorised, respondents 1 and 2 are directed to



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take appropriate action after following due procedure in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order. The petitioner may also be given an opportunity to put forth his case at every stage of proceedings that are initiated against the 3rd respondent for demolition of unauthorised construction. It is open to the petitioner to get his share declared and for allotment of 1/4th share in the suit. No costs. Consequently, connected miscellaneous petitions are closed.

(25)Post the matter on **03.06.2024 for reporting compliance.**

[S.S.S.R., J.] [N.S., J.]
14.02.2024

AP

Internet : Yes

Neutral Citation: Yes

To

1.The Commissioner

Tiruppur City Municipal Corporation
Tiruppur.

2.The Assistant Commissioner

Zone No.3, Tiruppur City Municipal
Corporation, Tiruppur.



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WP.Nos.12766/2020 & 7898/2021

S.S. SUNDAR, J.,
and
N.SENTHILKUMAR, J.,

AP

Common Order in
WP.Nos.12766/2020 & 7898/2021

14.02.2024