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W.P.No.15169 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.15169 of 2023

and

W.M.P.Nos.14669 & 14671 of 2023

Perumal (deceased)

- 1.Muniyanmmal
- 2.Valli
- 3.Mageswari
- 4.Jayanthi
- 5.Gomathi
- 6.Neela

... Petitioners

*[P1 to P6 brought on record as legal heirs of
deceased petitioner Perumal vide order dated
01.07.2024 in W.M.P.No.11894 of 2024
in W.P.No.15169 of 2023]*

Vs.

- 1.The Executive Officer,
EddakaiNadu Town Panchayat,
Kadapakkam, Chengelpattu.



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2.C.Suseelammal

3.C.Geetha

4.C.Rajan

5.C.Chitra

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the entire records pertaining to the impugned order/notice dated 26.04.2023 passed in அ.எண்.1/2023 issued by the 1st respondent herein and quash the same as illegal and untenable in law consequentially direct the 1st respondent herein to conduct a proper enquiry and inspection in a manner known to law as per the order dated 08.03.2023 passed in W.P.No.5583 of 2019.

For Petitioner : Mr.M.Selvam

For R1 : Mr.V.Jayaprakash Narayanan

For R2 to R5 : Mr.R.Subburaj



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ORDER

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

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus challenging the order/notice dated 26.04.2023 passed in அ.எண்.1/2023 issued by the 1st respondent herein, and to direct the 1st respondent herein to conduct a proper enquiry and inspection in the manner known to law as per the order dated 08.03.2023 passed in W.P.No.5583 of 2019.

2.The petitioner states that he is the absolute owner of the property at Survey No.48/1 (part) to an extent of 55.5 Cents at Muthaliyarkuppam Village, Cheyyur Taluk, by virtue of sale deed dated 26.12.1980. Though the petitioner states that he is the absolute owner, there is dispute regarding title. One A.Chakrabani, who is the husband of the 2nd respondent, has submitted several representations to several authorities complaining land grabbing against the petitioner. He also filed a writ petition earlier in W.P.No.33217 of 2017 for issuance of a Writ of Mandamus to direct the Sub-Collector/Revenue Divisional Officer to take appropriate action and pass



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orders on his appeal dated 24.10.2017. The said writ petition was disposed of by order dated 20.12.2017 in the following lines :

“4.This Court, at this stage, is not expressing any view on the merits of the claim made by the petitioner, as it is for the first respondent to consider and decide the same on merits and in accordance with law. Accordingly, this writ petition is disposed of, only by directing the first respondent to consider and pass orders on the appeal filed by the petitioner on merits and in accordance with law, after giving notice to the petitioner as well as to the respondents 3 to 6 and other interested persons, if any. Such exercise shall be done by the first respondent within a period of twelve weeks from the date of receipt of a copy of this order. No costs.”

3.The private respondents, who are the wife and children of the said Chakrabani, filed another writ petition in W.P.No.5583 of 2019 for issuance of a Writ of Mandamus directing the Executive Officer of the Town Panchayat to remove the unauthorised construction made by the petitioner herein, as detailed in the representation submitted by the petitioners therein. The said writ petition was also disposed of by order dated 08.03.2023 in the following lines :



“5.Considering the above rival submissions of the learned counsel appearing for the petitioner and the learned counsel appearing for the 3rd respondent and the nature of relief sought for in the Writ Petition, the 1st respondent is directed to inspect the property after issuance of notice to the petitioners and the 3rd respondent within a period of two weeks from the date of receipt of a copy of this order and if there is any unauthorized construction, take action against the 3rd respondent within a period of four weeks thereafter and file a report before this Court.

6.With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.”

4.Learned counsel appearing for the private respondents would also refer to the order of this Court dated 28.04.2023. While disposing of the writ petition in W.P.No.5583 of 2019 by order dated 08.03.2023, this Court directed the matter to be posted for reporting compliance. When the matter again appeared on 28.04.2023, this Court recorded as follows :

“3.Learned counsel appearing for the 1st respondent



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submitted that as per the order of this Court, the 1st respondent inspected the property on 27.04.2023, issued notice to the 3rd respondent granting 30 days time and the 1st respondent will proceed further in accordance with law.

4.In view of the above submissions, no further order is necessary in this Writ Petition.”

5.This Court never considered the rival claim nor addressed the issue as between the petitioner and the private respondents. The private respondents have disputed the title of the petitioner. It is only on the basis of their claim of exclusive title over the property, the private respondents have objected to the construction. It is not in dispute that the petitioner is in physical possession of the property. The petitioner has put up a small residential building with 500 sq.ft. and the construction is not a permanent one. Except stating that the building has been put up without building plan approval, it is not the case of anyone that the construction is in violation of Building Regulations. In such circumstances, having regard to the nature of construction, this Court is of the view that the impugned order suffers from total non-application of mind.



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6. It is now admitted before this Court that the petitioner has challenged the order passed by the District Revenue Officer allowing the appeal filed by the private respondents. Assuming that the private respondents establish their title, they are entitled to seek recovery of possession. Merely because the private respondents may get a declaration in their favour based on Revenue proceedings, the private respondents may not be granted a relief to take possession of the property. In such circumstances, this Court is convinced that the official respondents have taken action for unauthorized construction only at the instigation of the private respondents and it was not on the ground that the building put up by the petitioner is not adhering to the Building Regulations. Since the building is less than 600 sq.ft., a question has to be considered by the respondents as to whether building approval is required, as the official respondents have reported in yet another case that such building, which is less than 600 sq.ft. in area and whose owner may be the beneficiaries of Central Government Scheme, does not require approval. In these circumstances, this Court is unable to sustain the impugned order dated 26.04.2023, directing the petitioner to remove the



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construction based on the general direction of this Court in W.P.No.5583 of 2019 and W.P.No.33217 of 2017.

7.The impugned order clearly reveals that action had been taken under the provisions of the Tamil Nadu District Municipalities Act, 1920, only at the instigation of the private respondents and as per the order of this Court in W.P.No.5583 of 2019. Though the private respondents who are aggrieved by alleged unlawful possession by petitioner have an effective alternative remedy before the Civil Court, they have not filed any Civil Suit to establish their title, following the order passed by the Revenue officials. It is well settled that patta is not a document of title, but may be a piece of evidence to show one's possession. Under such circumstances, on the basis of mutation of Revenue records, this Court cannot interpret the possession of petitioner as one without authority or as one which is illegal. This Court cannot consider whether the petitioner is in encroachment of somebody's land. When the matter has to be adjudicated before a different forum, this Court is unable to see any justification for taking enforcement action against the petitioner's building.



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8.Since it is admitted that the petitioner has not applied for planning permission so far, it is also open to the petitioner to apply for planning permission, if necessary, and if it is permissible in law. In case the petitioner's application is rejected on merits, it is open to the official respondents to proceed with in the manner known to law for unauthorized construction. However, it is not necessary to take action at the instigation of the private respondents who have a rival claim.

9.This writ petition is disposed of accordingly. No costs.
Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) (N.S., J.)
01.07.2024

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Neutral Citation : Yes / No

To



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