



WEB COPY



W.P.No.5565 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

and

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P.No.5565 of 2016

and

W.M.P.Nos.4896 & 4895 of 2016

M.Gunasekaran

... Petitioner

Vs.

1. The District Collector,
O/o. of the District Collector,
Coimbatore.

2. The Block Development Officer,
Periyanaickenpalayam Panchayat Union Office,
Periyanaickenpalayam, Coimbatore.

3. The President,
Somayampalayam Panchayat,
Periyanaickenpalayam, Coimbatore.

4. Harini Arcade Welfare Association,
Rep. by its Secretary,
Mr.Pattabi Rama Gupta,
No.2/275, Harini Arcade,
Somayampalayam, Vadavalli,
Coimbatore.



W.P.No.5565 of 2016

5. The Tahsildhar,
Coimbatore North,
O/o.The Tahsildhar,
Balasundaram Road,
Coimbatore.

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, calling for the records of the 1st respondent in her proceedings Na.Ka.No.174/2013/A4 dated 24.12.2015 and quash the same.

For Petitioner : Mr.C.Jagadish for
Mr.D.Vairamoorthy

For Respondents : Mr.A.Selvendran,
Special Government Pleader ,
(for R1 to R3 & R5)

Mr.Babu Rangasamy for
M/s.Babu Rangasamy Associates,
(for R4)

ORDER

(Order of the Court was delivered by S.M.Subramaniam J.)

The order of the District Collector, Coimbatore, dated 24.12.2015, to remove the encroachers from the subject property, described in the present proceedings, is under challenge.



W.P.No.5565 of 2016

2. The learned counsel for the petitioner would submit that the petitioners are not encroachers but title holders. By misinterpretation, the 4th respondent claimed the subject property as common Park (public purpose land as earmarked in the layout approved under Town and Country Planning Act). Whether it is a park earmarked under the approved lay out or a patta land, is a disputed question, which cannot be adjudicated in a writ proceedings, under Article 226, of the Constitution of India.

3. Already a Civil Suit has been instituted in O.S. No. 491 of 2015, challenging the Settlement Deed. The Suit was dismissed and an Appeal Suit in A.S. No.6 of 2021 is pending. The District Collector adjudicated the issues and made a finding that the subject property is a Park, earmarked for public use under the approved lay out. Therefore, the burden of proof lies on the petitioner to establish his title or ownership.

4. The learned counsel for the petitioner would submit that a tiled house was there in the subject property for several years and therefore, it was misconstrued and the 4th respondent is attempting to take undue advantage. However, the District Collector verified the approved layout and made a finding that it is a park earmarked for public use.



W.P.No.5565 of 2016

WEB COPY

5. That being so, the parties are at liberty to approach the Civil Court for the purpose of establishing their rights based on the documents and evidences available on record. As far as the order impugned, passed by the District Collector is concerned, there is no impediment for the authorities to proceed in accordance with law.

6. With these observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S.J.,)

(K.R.S.J.,)

12.02.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)



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S.M.SUBRAMANIAM, J.

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