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W.A.No.3078 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2024

CORAM :

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.3078 of 2024

and

C.M.P No.23270 of 2024

Sri Mayuranathaswamy Uchikala Kattalai Trust
Trustees rep by its Power Agent,
Mr.R.Pandian,
No.64/32, E.V.R.Street,
Mayiladuthurai.

... Appellant

Vs.

The Commissioner
Mayiladuthurai Municipality,
Mayiladuthurai

... Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act 1865, praying to set aside the order dated 22.08.2024 in W.P No.15265 of 2024 and allow this appeal.

For Appellant : Mr.V. Raghavachari, Senior Counsel
for Mr.M.Venkatakrishnan

For Respondent : Mrs.V. Yamuna Devi
Special Government Pleader



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ORDER

(Order of the Court was made by D.KRISHNAKUMAR,J.)

This intra court appeal has been filed by the power of attorney of the writ petitioner/Sri Mayuranathaswamy Uchikala Kattalai Trust, as against the order passed by the learned Single Judge in W.P.No.15265 of 2024, dated 22.08.2024, in and by which, the prayer " to restrain the respondent from proceeding with the water pipeline laying works in the lands comprised in T.S.No.795/1, Block No.20, Ward-6, Mayiladuthurai Town and Taluk, Mayiladuthurai District, without following due process of law " was dismissed.

2. According to the appellant, certain persons had purchased some of the trust properties from the erstwhile power agent, who misused his power. As such, the present power attorney was appointed to collect the rents from the occupants, who accepted the title of the Kattalai and also to initiate civil proceedings against the persons who occupied the properties illegally. In such circumstances, on the application made by the illegal occupants of the trust property, the respondent has started digging the lanes for laying the



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water pipelines with the help of heavy machineries. Though the appellant has issued legal notice as well as the objection to the respondent, without adhering to the same, they have continued their work. Hence the appellant has filed the writ petition.

3. Learned Senior Counsel appearing for the appellant submitted that, apart from filing of the above writ petition to stop the work of laying water pipe line by the respondent herein, already the appellant Trust has filed O.S.No.47 of 2019 on the file of District Munsif, Mayiladuthurai and O.S.No.317 of 2020 on the file of Principal Subordinate Judge, Mayiladuthurai against the the Electricity Board, not to give electricity connection to the trust property, without any written permission given by the Trust. Further, it is contended by him that in O.S.No.317 of 2020, interim injunction was also granted in favour of the Trust, vide order dated 03.09.2020 in I.A.No.2/2020. He also submitted that, already the right and title over the subject matter of the property was decided in favour of the appellant, vide judgment dated 11.09.2010 passed in A.S.No.29 of 2009 by the Principal Subordinate Judge, Mayiladuthurai.



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4. Learned Senior Counsel also submitted that, the Trust has not given no objection certificate to the occupants to get the water connection with regard to the subject matter of the property. In such circumstances, without appreciating the factum of pending civil cases and also granting of interim injunction in favour of the Trust, learned Single Judge has dismissed the writ petition observing as " even assuming that the petitioner trust is the owner of the subject property, they cannot prevent the authorities from providing basic amenities, such as electricity and water, as they are integral part of Right to Life within the meaning of Article 21 of the Constitution of India ". Hence he seeks to set aside the order passed by the learned Single Judge.

5. Heard the learned Senior Counsel appearing for the appellant and the learned Special Government Pleader appearing for the respondent and we have perused the materials on record.

6. It is contended by the appellant/ Sri Mayuranathaswamy Uchikala



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Kattalai Trust that, the Trust is the the absolute owner of the subject matter of the property and as per the judgment and decree made in A.S.No.29 of 2009, dated 11.08.2010, the Trust has been declared as the owner of the property. It is the case of the appellant that, the Trust has not given any no objection certificate to get the water connection; or gifted any portion of the property in favour of the Municipality. It is further case of the appellant that some of the persons, who occupied the trust property illegally had constructed the unauthorised building and on the application made by the illegal occupants, the Municipality has taken steps to lay the pipe lines to provide water connection to the subject matter of the property.

7. In such circumstances, when the appellant has claimed the property as absolute property and the civil suits in O.S.No.47 of 2019 and O.S.No.317 of 2020 are also pending, objecting for grant of electricity service connection with regard the subject matter of the property, the claim of the appellant before the writ court to restrain the respondent from laying pipe line, cannot be entertained under Article 226 of the Constitution of India and it can be decided only after letting oral and documentary evidence



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by the parties concerned before the Trial Court. Hence, we are of the view that, the remedy for the appellant is only before the civil court and in view of the same, the observations made by the learned single judge, discussing the title and ownership of the property in the writ petition cannot be sustained.

8. Accordingly, the writ appeal is disposed of by granting liberty to the appellant to approach the civil court seeking remedy. We make it clear that, if the appellant approached the civil court, the same shall be considered by the civil court and pass appropriate orders on its own merits and in accordance with law, without being influenced any of the observations made by this Court. There shall be no order as to costs. Connected CMP No.23270 of 2024 is closed.

(D.K.K.J.) (P.B.B.J.)

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To

The Commissioner,

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Mayiladuthurai Municipality,
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