



W.P. No. 36041 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 36041 of 2023

N.Rajesh Kanna

... Petitioner

-VS-

1. The District Collector,
Kancheepuram,
Kancheepuram District.
2. The Block Development Officer,
Kundrathur Panchayat Union,
Padappai,
Kancheepuram District.
3. The Panchayat President,
Gerugambakkam Village Panchayat,
Kundrathur Taluk,
Kancheepuram District.
4. The State represented by its Inspector of Police,
Mangadu Police Station,
Mangadu,
Kancheepuram District.
5. C.Ramesh
6. S.R.Malarkodi
Respondents

...

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Declaration, declaring the action taken by the Third Respondent granting permission for demolition of the property situate at



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1/66, Venugopal Perumal Koil Street, Gerugambakkam, Kundrathur Taluk, Kancheepuram District comprised in Old Survey No. 213/11 and New Survey No. 776/13 as arbitrary, illegal and in contravention of the orders passed by this Court in W.P. No. 19885 of 2023 dated 06.07.2023 and consequently direct the First Respondent herein to take action against the Third Respondent herein in accordance with law.

For Petitioner : Ms. N.Asmitha

For Respondents : Mr. S.J.Mohamed Sathik,
Government Advocate (for R1)

Mr. V.P.R.Elamparithi (for R2 & R3)

Mr. J.Subbiah,
Government Advocate (Criminal Side)
(for R4)

Mr. R.Chandrasekar (for R5 & R6)

ORDER

Heard Ms. N.Asmitha, Learned Counsel for the Petitioner, Mr. S.J.Mohamed Sathik, Learned Government Advocate appearing for the First Respondent, Mr. V.P.R.Elamparithi, Learned Counsel for the Second and Third Respondents, Mr. J.Subbiah, Learned Government Advocate (Criminal Side) appearing for the Fourth Respondent and Mr. R.Chandrasekar, Learned Counsel for the Fifth and Sixth Respondents and perused the materials placed on record, apart from the pleadings of the parties.



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2. It is the case of the Petitioner that the action taken by the Third Respondent granting permission for demolition of the property situate at 1/66, Venugopal Perumal Koil Street, Gerugambakkam, Kandrathur Taluk, Kancheepuram District comprised in Old Survey No. 213/11 and New Survey No. 776/13 (hereinafter referred to as 'the property' for short), is arbitrary, illegal and in contravention of the order dated 06.07.2023 in W.P. No. 19885 of 2023 passed by the Court and has sought for directions to the First Respondent to take action against the Third Respondent in accordance with law.

3. In response, the Fifth and Sixth Respondents, who had filed the said Writ Petition in W.P. No. 19885 of 2023, have filed Counter-Affidavit dated 09.01.2024 contending that the Petitioner does not have semblance of any right, title or interest over the property at present as reflected from the judgment and decree dated 18.08.2023 in A.S. No. 584 of 2017 passed by this Court against the judgment and decree dated 25.05.2017 in O.S. No. 31 of 2010 on the file of the District Court No. II, Kancheepuram. It has been brought to notice that the Petitioner was the Eighteenth Defendant in O.S. No. 31 of 2010 and the Appellant in A.S. No. 584 of 2017 and at para 35 of the judgment in the said appeal, this Court has observed as follows:-



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“35. Point No.3:-

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The plaintiffs and Defendant Nos.1 and 18 have claimed partition based on the Wills Exs.A5 and A6. On a perusal of the Wills Exs.A5 and A6, it shows that Krishna Reddiyar has bequeathed 'A' Schedule property to the unborn children of male issues of the first plaintiff, first defendant (died), third defendant, after giving life estate to the first plaintiff, defendant Nos.1 and 3. Similarly, Mangalakshmi Ammal executed the Will, Ex.A6, bequeathing the properties to the unborn child born to her daughters-in-law after giving life estate to her daughters-in-law i.e., second plaintiff, second defendant and fourth defendant after their death. Now, the Defendant No.18 as a male heir, who is having vested interest on the suit 'A' and 'B' Schedule properties, seeks partition of the same. Admittedly, the life estate holder of 'A' Schedule properties i.e., the first plaintiff is alive. Similarly, the life estate holder of 'B' Schedule properties i.e., second defendant is also alive. Till their demise, the male issues i.e., Defendant No.18 and Defendant No.23 (who is the son of the first defendant) are not entitled to claim any partition in the



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properties since vested right shall not be enforceable during the life time of life interest holders. Resultantly, the claim of Defendant No.18 seeking partition in 'A' and 'B' Schedule property is liable to be rejected. In point No.2, this Court has already rejected the claim of the defendant No.18 on the Schedule 'C' properties, the point No.3 is answered accordingly.”

In view of the same, it is not possible to grant any relief to the Petitioner in this Writ Petition and he could pursue his claim only after he gets any right vested in that property, in which event, he could then work out his rights before the proper forum in the manner recognized by law.

In the result, the Writ Petition is dismissed with the aforesaid clarification. No costs.

10.01.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 05.06.2024.

vjt



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To

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P.D. AUDIKESAVALU, J.

vjt

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