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W.P.(MD) No.2687 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2024

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD) No.2687 of 2024
and
W.M.P.(MD) No.2700 of 2024**

M.Nagarajan

... Petitioner

-vs-

- 1.The Tahsildar
Palani Taluk Office
Dindigul District
- 2.The Executive Officer /
Joint Commissioner
Hindu Religious and
Charitable Endowments Department
Arulmighu Dhandayuthapani Thirukovil
Palani Town and Taluk
Dindigul District
- 3.The Commissioner
Palani Municipality
Palani Town and Taluk
Dindigul District

... Respondents



W.P.(MD) No.2687 of 2024

WEB COPY

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records of the impugned order passed by the first respondent in his proceedings in Na.Ka.No.9317/2017/C2, dated 31.01.2024 and quash the same as illegal and without jurisdiction.

For Petitioner : Mr.B.Saravanan, Senior Counsel
assisted by Mr.D.Kirubakaran

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.S.P.Maharajan
Special Government Pleader for R1
Mr.R.Baraneedharan
for Mr.R.Murali for R2
Mr.L.P.Maurya for R3

ORDER

[Order of the Court was made by D.KRISHNAKUMAR, J.]

Mr.S.P.Maharajan, learned Special Government Pleader, takes notice for the first respondent, Mr.R.Murali, learned counsel, takes notice for the second respondent and Mr.L.P.Maurya, learned counsel, takes notice for the third respondent.



WEB COPY

W.P.(MD) No.2687 of 2024

2. With the consent of both sides, the writ petition is taken up for final hearing at the admission stage itself.

3. The notice, dated 31.01.2024, issued by the first respondent, directing the petitioner to remove the encroachments made by him in T.S.No. 11, Block No.21, Ward No.3, Palani Town, is under challenge in the present writ petition.

4. Learned Senior Counsel appearing for the petitioner would submit that the property in question is T.S.No.11 corresponding to Old Survey No.889/1. The petitioner filed a suit in O.S.No.85 of 2020, before the District Munsif Court, Palani, praying for permanent injunction as against the Revenue Department and the Devasthanam not to dispossess him from the property in Survey No.889/1. However, the said suit came to be dismissed by Judgment and Decree dated 03.06.2023. Challenging the same, the petitioner has filed an appeal in A.S.No.21 of 2023, before the Sub Court, Palani, wherein an order of interim stay has been granted in favour of the petitioner. Therefore, the Revenue Department has no right for removal of encroachments in the said property.



WEB COPY

W.P.(MD) No.2687 of 2024

5. Learned Additional Advocate General appearing for the first respondent strongly objected to the above contentions of the learned Senior Counsel by stating that the property in question is a poramboke land and it is classified as “Temple Poramboke” in the revenue records and therefore, the Revenue Authority is the competent authority to remove the encroachments in the said survey number.

6. Learned Additional Advocate General would further submit that the Revenue Tahsildar has conducted a survey in the entire property with the assistance of the Taluk Surveyor and has found that there is an encroachment made by the petitioner by running a chip shop and Panchamirtham shop, which are to be removed.

7. Learned counsel appearing for the second respondent / Devasthanam has categorically stated that in the property in question, the petitioner has no right to make any claim. Further, the Devasthanam has filed a vacate stay petition seeking to vacate the interim order granted in the appeal suit and the same is pending disposal. In view of the pendency of the said vacate stay petition, the encroachments could not be removed.



W.P.(MD) No.2687 of 2024

WEB COPY

8. Heard the learned counsel on either side and perused the materials available on record.

9. It is brought to the notice of this Court that for the property in question in T.S.No.11 corresponding to Old Survey No.889/1, the petitioner filed a suit against the Revenue Department and Devasthanam praying permanent injunction not to dispossess him from the said property. The said suit came to be dismissed. Challenging the same the petitioner preferred an appeal, wherein the first Appellate Court has granted an interim order in favour of the petitioner. In the meantime, the present impugned notice has been issued to the petitioner. In such circumstances, we direct the learned Sub Judge, Palani, to dispose A.S.No.21 of 2023 filed by the petitioner herein, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. It is needless to state that the petitioner shall cooperate for early disposal of the appeal suit. Till such time, the impugned notice shall be kept in abeyance. After disposal of the said appeal suit, appropriate action may be taken in accordance with law, if necessary.



WEB COPY

W.P.(MD) No.2687 of 2024

10. Accordingly, the writ petition is disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

[D.K.K., J.]

[R.V., J.]

07.02.2024

(3/3)

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

Note to Office:

- 1.Upload in the Website today.
- 2.Mark a copy of this order to the Sub Judge, Palani.

krk

To:
The Tahsildar,
Palani Taluk Office,
Palani, Dindigul District.



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D.KRISHNAKUMAR, J.
and
R.VIJAYAKUMAR, J.

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(3/3)