



W.P.(MD)No.4693 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2024

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CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.4693 of 2024

and

W.M.P.(MD)No.4528 of 2024

N.Sakthivel

: Petitioner

Vs.

1.The Executive Engineer,
Tamil Nadu Urban Habitat Development Board,
Madurai Circle,
No.169, K.K.Nagar Main Road,
Madurai – 20.

2.R.Jothi

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the records pertaining to the impugned eviction order passed by the first respondent in Na.Ka.No.2506/A3/2022 dated 12.02.2024 and quash the same.

For Petitioner : Mr.Charles Kamalesh M.Appaji

For Respondent No.1 : Ms.S.Latha

For Respondent No.2 : Mr.K.Navaneetharaja



W.P.(MD)No.4693 of 2024

ORDER

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

This Writ Petition has been filed seeking to quash the impugned eviction order passed by the first respondent in Na.Ka.No.2506/A3/2022 dated 12.02.2024.

2.Heard Mr.Charles Kamalesh M.Appaji, learned Counsel appearing for the petitioner, Ms.S.Latha, learned Counsel appearing for the first respondent and Mr.K.Navaneetharaja, learned Counsel appearing for the second respondent.

3.According to the learned Counsel for the petitioner, the petitioner's elder brother Pandi was allocated to the adjacent property of his grandfather bearing Door.No.241 in the year 1990 and he is residing there with his family. Thereafter, the petitioner's father purchased the adjacent property from one Rajeshwari and tagged the same with the plot allocated to the petitioner. The northern portion of the plot was allocated to his brother Arumugam and western side portion of the plot was allocated to another brother Ravi. The petitioner's grandfather Natchimuthu has executed a settlement deed on 10.09.2007, in respect of 300 sq. ft of land in favour of the petitioner through a registered settlement deed in Doc.No.3962/2007. After the settlement, the petitioner has



W.P.(MD)No.4693 of 2024

demolished the structure and put up a house in the said property after getting plan approval from the Madurai Corporation and is residing there along with his family.

4.After the construction of the new house, the petitioner's brothers Pandi and Ravi and the son and daughter of Pandi namely, Guna and Rani made an attempt to trespass into the petitioner's property and they tried to demolish the toilet portion of his house property. Thereafter, the petitioner filed a suit in O.S.No.333/2015, on the file of the District Munsif Court, against them but they have not chosen to enter appearance and they were set ex-parte and the suit was decreed on 23.01.2018. The application to set aside the exparte decree filed by the defendants was also dismissed and a Civil Miscellaneous Appeal is pending before the Sub-Court, Madurai.

5.It is submitted that the second respondent who is the wife of the petitioner's brother Ravi filed a Writ Petition in W.P. (MD)No.931 of 2021, before this Court seeking for a direction to the respondent therein to remove the encroachments in the pathways allotted by the Tamil Nadu Slum Clearance Board, Madurai in T.S.No.2720 at Jawaharpuram, K.Pudur, Madurai. According to the second respondent, the petitioner's grandmother Maariyamma was the original allottee of the Slum Clearance Board



plot and the petitioner's father Nachimuthu has no right to convey the property to the petitioner by way of a settlement deed which is a fabricated document. Further, it was alleged that in the settlement deed the property earmarked for public utility has been included and the petitioner has encroached upon the same and put up toilet, compound wall and gate, thereby restricting the public movement. On 23.11.2021, the said Writ Petition came to be disposed of with a direction to the respondents 3 and 4 therein to consider the representation of the petitioner therein and take appropriate action for removal of the encroachment, after affording due opportunity of hearing to the parties concerned.

6. Thereafter, the first respondent passed an eviction notice dated 08.05.2023, which was challenged by the petitioner in W.P.(MD)No.12620 of 2023. This Court vide order dated 27.07.2023, disposed of the said writ petition. The relevant portion of the order is as follows:

'4. In the said circumstances, the first respondent is directed to conduct a survey by inviting the Tahsildar and the Surveyor. The Tahsildar concerned, on the application filed by the first respondent, is directed to issue notice to the petitioner as well as the first respondent. The Tahsildar shall draw a report and give a copy of the report to the petitioner as well as the first respondent reflecting the result of the



W.P.(MD)No.4693 of 2024

survey. The Tahsildar shall specify the boundaries with reference to the revenue documents and give his findings. In case, the Tahsildar ultimately find that the petitioner is in encroachment by putting up any construction, it is open to the Estate Officer to proceed further under the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 to remove the encroachment by the petitioner.'

7. According to the petitioner, without giving any opportunity to the petitioner and without furnishing the copy of the report the present eviction notice dated 12.02.2024 has been passed by the first respondent. Hence, the petitioner is before this Court with the present Writ Petition.

8. The learned Counsel for the first respondent has now served the copy of the report dated 24.01.2024, to the learned Counsel for the petitioner before this Court.

9. In view of the above, the impugned order passed by the first respondent is quashed and the matter is remitted back to the first respondent for fresh consideration, who shall pass appropriate orders afresh within a period of twelve [12] weeks from the date of receipt of a copy of this order. It is open to the petitioner to make



W.P.(MD)No.4693 of 2024

any objections for the aforesaid report and the same shall be submitted within a period of two [2] weeks from today. It is needless to say that if there is any encroachment in the aforesaid property, the first respondent shall act in accordance with law by initiating action under the provisions of law.

10.With the above direction, this Writ Petition stands allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

[D.K.K.,J.] & [R.V.,J.]

14.03.2024

Neutral Citation : Yes/No

Index : Yes/No

Internet : Yes/No

MR



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W.P.(MD)No.4693 of 2024

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W.P.(MD)No.4693 of 2024

D.KRISHNAKUMAR, J.

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R.VIJAYAKUMAR, J.

MR

ORDER MADE IN

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