



W.P.(MD) No.21484 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.21484 of 2018

G.Kiran

... Petitioner

Vs.

- 1.The Assistant Director (Panchayat),
Collectorate,
Kanyakumari District.
- 2.The Public Information Officer /
Deputy Block Development Officer (Panchayat),
Munchirai Panchayat Union,
Munchirai.
- 3.The Special Officer,
Adaikkakuzhi Panchayat,
Adaikkakuzhi P.O.,
Kanyakumari – 629 153.
- 4.Thanislus alias Nathaniel,
Retired Village Administrative Officer,
Mankuzhi Veedu,
Piracode Desom,
Methukummal Village,
Vilavancode Taluk,
Kanyakumari District.
- 5.Mary Samlet,
W/o.Thanislus alias Nathaniel,
Retired Village Administrative Officer,
Mankuzhi Veedu,



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Piracode Desom,
Methukummal Village,
Vilavancode Taluk,
Kanyakumari District.

... Respondents

[R4 and R5 impleaded vide order dated 27.06.2024,
made in W.M.P.(MD)No.4361 of 2019]

Prayer:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus, directing the third respondent to grant building construction approval on the application of the petitioner, dated 25.03.2017, within a time frame to be fixed by this Court.

For Petitioner	: Ms.J.Anandhavalli
For R1 to R3	: Mr.G.Suriyananth Additional Government Pleader
For R4 and R5	: Mr.K.N.Thampi

ORDER

Heard the learned counsel for the petitioner, the learned Additional Government Pleader for the respondents 1 to 3 and the learned counsel for the respondents 4 and 5.

2. This Writ Petition has been filed by the petitioner for issuance of a Writ of Mandamus, to direct the third respondent to grant building construction approval based on the application submitted by him on



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25.03.2017. The petitioner's mother namely, Sarojini is one of the defendants in O.S.No.55 of 1997. It covers a huge tract of land, measuring an extent of 66 Acres. A final decree in the above said suit was passed on 29.01.2014. The correctness of the judgment and decree dated 29.01.2014 is now subject matter of Appeal Suit in A.S.No.120 of 2014 before the Sub Court, Kuzhithurai. Meanwhile, several execution proceedings came to be filed before the District Munsif Court, Kuzhithurai.

3. The mother of the petitioner had filed E.P.No.56 of 2014, wherein 396 persons were arrayed as respondents. The newly impleaded fourth respondent was arrayed as Respondent No.198 in E.P.No.56 of 2014 filed by the petitioner's mother. Apart from E.P.No.56 of 2014 filed by the petitioner's mother, there were few other E.Ps.

4. Orders were passed by the Execution Court in E.P.No.56, 58, 60, 64 and 66 of 2014 in O.S.No.55 of 1977, whereby delivery was ordered on 14.09.2015. Orders passed in E.P.No.56, 58, 60, 64 and 66 of 2014 in O.S.No.55 of 1977 on 14.09.2015 were subject matter of C.R.P.(MD) (NPD)Nos.2378 to 2382 of 2015. Orders dated 14.09.2015 passed in



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E.P.Nos.56, 58, 60, 64 and 66 of 2014 in O.S.No.55 of 1977 were set aside on 30.10.2018. Orders were reserved in C.R.P.(MD)(NPD)Nos. 2378 to 2382 of 2015 on 30.07.2018. The said C.R.Ps. came to be allowed by order dated 30.10.2018. The operative portion of the order reads as under:-

"28. For the foregoing reasons, this Court passed the following orders:

(i) These Civil Revision Petitions are allowed and the order dated 14.9.2015 passed in E.P.Nos.56, 58, 60, 64 and 66 of 2014 in O.S.No.55 of 1977 on the file of the Principal District Munsif, Kuthithurai is set aside;

(ii) The Principal District Munsif, Kuthithurai is directed to keep the execution proceedings of E.P.Nos.56, 58, 60, 64 and 66 of 2014 in O.S.No.55 of 1977 in abeyance till the disposal of A.S.No.120 of 2014 pending on the file of the Sub-Court, Kuzhithurai.

(iii) Since the appeal is of the year 2014, the Sub-Court, Kuzhithurai is directed to dispose of A.S.No.120 of 2014 pending on its file on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order.

(iv) The Sub-Court, Kuzhithurai is directed to dispose of A.S.No.120 of 2014 on merits and in accordance with law without influencing the order of this Court.

(v) The parties in A.S.No.120 of 2014 are directed to co-operate the first appellate Court for disposal of the appeal within the time stipulated supra.

(vi) If any of the party fails to co-operate for early disposal of the appeal, the first appellate Court is at liberty to proceed with the appeal based



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on the material papers available on record.

(vii) The Registry is directed to mark a copy of this order to the Sub-Judge, Kuzhithurai.

(viii) It is made clear that this Court has not delve into the merits of the matter in this order.

(ix) No costs. Consequently, connected miscellaneous petitions are closed."

5. The Paragraph preceding the above portion reads as under:-

"27. Since as against the final decree, the petitioners have preferred appeal and the same is still pending before the Sub-Court, Kuzhithurai, the Executing Court ought not to have ordered delivery of properties on the ground that there was no stay. Hence, without going into the merits of the matter and without affecting the rights of the parties, who have already taken delivery of the properties and in the interest of justice and also for proper adjudication of the matter, this Court feels that it would be appropriate to remand the Execution Petitions to the Executing Court for fresh consideration of the same after the disposal of A.S.No.120 of 2014 pending on the file of the Sub-Court, Kuzhithurai."

6. The petitioner has filed the present Writ Petition on 10.10.2018 before orders were passed on 30.10.2018 in C.R.P.(MD)(NPD)Nos.2378 to 2382 of 2015. It is noticed that as against the order passed by this Court in C.R.P.(MD)(NPD)Nos.2378 to 2382 of 2015 on 30.10.2018, S.L.Ps. are pending at the behest of the petitioner's mother in Special



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Leave to Appeal (C)Nos.20670 to 20674 of 2019. It is also noticed that the Hon'ble Supreme Court, vide order dated 06.09.2019, has stayed the above said order passed in C.R.P.(MD)(NPD)Nos.2378 to 2382 of 2015 dated 30.10.2018.

7. It is in this background, the petitioner now seeks for a Mandamus to direct the third respondent to grant building construction approval based on the application submitted by him on 25.03.2017.

8. The prayer for grant of building construction approval cannot be kept in abeyance, as the Hon'ble Supreme Court has stayed the order passed by this Court in C.R.P.(MD)(NPD)Nos.2378 to 2382 of 2015, dated 30.10.2018.

9. However, the permission to be granted by the third respondent to the petitioner will be subject to final outcome of the orders to be passed by the Hon'ble Supreme Court in the above said S.L.Ps. Hence, the authorities are directed to consider the petitioner's application in accordance with law as it prevails today. In case, the petitioner is required to file a fresh application through online, the same may be directed to be filed by the petitioner.



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10. It is made clear that if the newly impleaded respondents namely, the respondents 4 and 5 are already in possession of the property, the building construction approval application of the petitioner will be processed subject to the condition that the petitioner produces proof before the authority concerned that the petitioner is in possession of the property. Respondents 4 and 5 shall be heard before orders are passed on the application of the petitioner.

11. With the above direction, this Writ Petition stands disposed of.

No costs.

Index : Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
smn2

27.06.2024

To

- 1.The Assistant Director (Panchayat),
Collectorate,
Kanyakumari District.
- 2.The Public Information Officer /
Deputy Block Development Officer (Panchayat),
Munchirai Panchayat Union,
Munchirai.



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3.The Special Officer,
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C.SARAVANAN, J.

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