



C.R.P(MD)No.2501 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.10.2024**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.R.P(MD)No.2501 of 2024

and

C.M.P(MD)Nos.14372 and 14373 of 2024

R.N.Manikandan

...Petitioner/Petitioner/
Appellant

Vs.

The Commissioner,
Rajapalayam Municipality,
Rajapalayam.

...Respondent/Respondent/
Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the Fair and Decretal order, dated 05.07.2024 passed in I.A.No.3 of 2023 in A.S.No.5 of 2018, on the file of the Principal District and Sessions Court, Virudhunagar @ Srivilliputhur by allowing this Civil Revision Petition.

For Petitioner : Mr.S.Venkatesh
For Respondent : Mr.N.Dilipkumar



C.R.P(MD)No.2501 of 2024

WEB COPY

ORDER

The present Civil Revision Petition has been filed by the plaintiff in the suit against the order passed by the Principal District and Sessions Judge, Virudhunagar @ Srivilliputhur in I.A.No.3 of 2023 in A.S.No.5 of 2018, dated 05.07.2024.

2. The plaintiff in the suit is the revision petitioner herein and the defendant in the suit is the respondent herein. For the sake of convenience, the parties shall be referred to as plaintiff and defendant/Municipality.

3. The suit in O.S.No.45 of 2009 was filed in the year 2009 and no interim injunction was granted by the Trial Court. Thereafter, on 05.07.2017, the said suit was dismissed on merits. Against the said dismissal, the plaintiff had preferred an appeal suit on 11.12.2017 and it was numbered as A.S.No.5 of 2018. However, the said appeal suit was dismissed for default on 07.01.2023. In the meanwhile, the property was sealed by the defendant/Municipality on 14.09.2023. Thereafter, the plaintiff had filed Civil Revision Petition before this Court in C.R.P



C.R.P(MD)No.2501 of 2024

(MD)No.2544 of 2023 and the same was allowed on 31.10.2023, with a direction to the plaintiff to cooperate with the Appellate Court to dispose of the appeal within a period of two months from the date of receipt of a copy of the order. Instead of cooperating with the Appellate Court to dispose the appeal suit, the plaintiff had filed an interlocutory application on 28.11.2023 in I.A.NO.3 of 2023 in A.S.No.5 of 2018 under Section 151 of Civil Procedure Code, to remove the lock and seal which was locked by the defendant Municipality.

4. The Learned Counsel appearing for the defendant municipality submitted the said application was filed with an intention to drag on the proceedings, hence the present CRP deserves to be dismissed. He further submitted that at the time of disposal of earlier Civil Revision Petition itself, the plaintiff ought to have sought permission for re-opening the lock and seal or at least informed before this Court that his premises was under lock and seal and ought to have obtained an order. But the plaintiff has failed to do so and had filed I.A.No.3 of 2023 to drag on the proceedings.



C.R.P(MD)No.2501 of 2024

WEB COPY

5. It is seen that the premises in dispute is a “Kalmandapam”, which was put up by some Zamindar earlier. Admittedly, any Kalmandapam would be an ancient construction. According to the plaintiff, he had purchased the land where the premises is situated through a sale deed. And in the sale deed the Kalmandapam is also referred. But the contention of the defendant is that it is classified as “Road Poramboke”. Hence it is evident the said Kalmandapam was constructed for the passengers / passer-by to halt for a while during their journey. After road development or widening of road, the said Kalmandapam would have been in the middle of the road or on the road margin. In such circumstances, the Municipality cannot claim the said Kalmandapam is on the “Road Poramboke”. Further the Municipality has right over the roads and streets, since the same is vested with the Municipality as per the provisions of the Tamil Nadu District Municipality Act. But whether the municipality can claim right over the Kalmandapam is the question ought to be analysed. Furthermore, under what provision, the said construction was put under lock and seal also ought to be analysed.



C.R.P(MD)No.2501 of 2024

WEB COPY

6. Therefore, this Court is of the considered opinion that the issue ought to be thoroughly analysed by the Appellate Court. And this Court is also of the opinion that prior to the filing of the suit the plaintiff was in occupation of the disputed property, the petitioner is entitled to reopen the premises. The municipality shall remove the lock and seal within two days from the date of receipt of the copy of this order.

7. The appeal suit in A.S.No.5 of 2018 was already restored on file based on the order of this Court, dated 31.10.2023 passed in C.R.P(MD)No.2544 of 2023. Therefore, the Learned Principal District and Sessions Court, Virudhunagar at Srivilliputtur, is directed to dispose of the appeal in A.S.No.5 of 2018 within a period of 6 months from the date of receipt of a copy of this order. The plaintiff is directed not to take any adjournments in future and strictly shall cooperate with the Appellate Court to complete the proceedings of the appeal suit in A.S.No.5 of 2018 within the stipulated time.



C.R.P(MD)No.2501 of 2024

WEB COPY

8. In view of the aforesaid directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

28.10.2024

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

MR



C.R.P(MD)No.2501 of 2024

WEB COPY

To

1. The Principal District and Sessions Court,
Srivilliputhur,
Virudhunagar District.
2. The Commissioner,
Rajapalayam Municipality,
Rajapalayam.
3. The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P(MD)No.2501 of 2024

S.SRIMATHY,J.

MR

C.R.P(MD)No.2501 of 2024

28.10.2024