



W.P.No.34086 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.34086 of 2024

1. C.Ramesh

2. S.R.Malarkodi

.... Petitioners

Vs

1.The State rep by its
Inspector of Police,
Mangadu Police Station,
Mangadu,
Kancheepuram District.

2. Rajeshkanna

.... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the 1st respondent herein to provide adequate police protection to the life and limb of the petitioner to remove the debris in the land comprised in Old S.No. 213/ 11, and New S.No. 776/ 13 extent 3037.5 Sq.ft. situated at 1/66, Venugopal Perumal Koil Street, Gerugambakkam, Kundrathur Taluk, Kancheepuram District, by considering the representation dated 17.10.2024 within time to be stipulated by this Court.



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W.P.No.34086 of 2024

For Petitioners : Mr.R.Chandrasekaran
For R1 : Mr.K.M.D.Muhilan
Government Advocate (Crl.Side)
For R2 : Mr.S.Balasubramanian for M/s.Leela & Co.

ORDER

This Writ Petition has been filed seeking a direction to the first respondent to provide adequate police protection to the life and limb of the petitioners while removing the debris from the land owned by them comprised in Old S.No. 213/11 and New S.No. 776/13 to an extent of 3037.5 Sq.ft. situated at 1/66, Venugopal Perumal Koil Street, Gerugambakkam, Kandrathur Taluk, Kancheepuram District.

2. The petitioners derived the title over the property through the execution of a Will in Document No.6 of 1980, registered by the first petitioner's grandfather. The property contains a dilapidated condition building, aged about 200 years old, which is in a dangerous condition. Therefore, the petitioners sought a direction to demolish the same. Subsequently, the first petitioner executed a settlement deed in favour of the second petitioner, who is the wife, by a registered settlement deed vide document No.3966 of 2022 to an extent of 2106 sq.ft.



W.P.No.34086 of 2024

3. While being so, the second respondent, who also claims a share in the property, obstructed the petitioners from dealing with the property. Therefore, the petitioners was constrained to file a writ petition before this Court in W.P.No.19885 of 2023 seeking permission to demolish the old building situated in the subject property. This Court, by an order dated 06.07.2023, directed the Block Development Officer, Kundrathur, to consider the representation submitted by the petitioners dated 29.05.2023 and pass necessary orders in accordance with law. Accordingly, the petitioners was accorded permission to demolish the dilapidated building.

4. In the meanwhile, the second respondent filed a suit in O.S.No.31 of 2010 for partition. The said suit was dismissed by an order dated 25.05.2017. Aggrieved by the same, the second respondent filed an appeal in A.S.No.584 of 2017 before this Court. The Hon'ble Division Bench of this Court dismissed the appeal suit and the order passed in O.S.No.31 of 2010 was confirmed. Therefore, the second respondent has no title or right over the subject property to question the petitioners' decision to demolish the building or to obstruct any action concerning the property.



W.P.No.34086 of 2024

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5. That apart, the second respondent filed a writ petition before this Court in W.P.No.36041 of 2023 seeking a declaration that the action taken by the Panchayat in granting permission for demolition of the building in the subject property was invalid. This Court, by an order dated 10.01.2024, dismissed the writ petition on the ground that the second respondent could pursue his claim only after acquiring a vested right in the subject property. In fact, this Court also recorded the findings of the Appellate Court in A.S.No.584 of 2017, which are as follows :

“35. Point No.3:-

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.



WEB COPY



W.P.No.34086 of 2024

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 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.”

6. Therefore, the second respondent does not have any right over the property to object the petitioners to remove the debris from the demolished building in the subject property. As directed by this Court in W.P.No.19885 of 2023, by an order dated 06.07.2023, the petitioners were duly granted permission to demolish the dilapidated condition building comprised in Old S.No. 213/11 and New S.No. 776/13 to an extent of 3037.5 Sq.ft. situated at 1/66, Venugopal Perumal Koil Street, Gerugambakkam, Kundrathur Taluk, Kancheepuram District. Accordingly, the demolition of the dilapidated condition building could not be able to remove, since the second respondent has objected the same that too without any right over the property.

7. In view of the above, the petitioners can very well to



W.P.No.34086 of 2024

approach the first respondent if there is any obstruction by the second respondent. The first respondent is directed to provide adequate police protection to the petitioners' life and limb while removing the debris from the land comprised in Old S.No. 213/11 and New S.No. 776/13 to an extent of 3037.5 Sq.ft. situated at 1/66, Venugopal Perumal Koil Street, Gerugambakkam, Kundrathur Taluk, Kancheepuram District.

8. In the result, this Writ Petition stands allowed. No costs.

10.02.2025

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Lpp

To

The Inspector of Police,
Mangadu Police Station,
Mangadu,
Kancheepuram District.

G.K.ILANTHIRAIYAN. J.

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W.P.No.34086 of 2024

W.P.No.34086 of 2024

10.02.2025