
(2011) 03 MAD CK 0641
In the Madras High Court
Case No : Writ Petition No. 22067 of 2010

E. Rajendran

APPELLANT

Vs

The District Collector, Thiruvallur District and The
Commissioner, Madhavaram Municipality

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Citation : (2011) 03 MAD CK 0641

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : S. Arivazhagan, for the Appellant; Lita Srinivasan, GA for R1 and V. Srikanth, for R2, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The Petitioner has filed the present writ petition seeking issuance of writ of mandamus directing the 2nd Respondent herein to demolish the Over Head Water Tank constructed in the Petitioner's house site plot No. 16, Kannan Nagar Layout, comprised in Survey No. 1057/2-A, T.S. No. 6 and 7, Block Nos. 38 a No. 50, Madhavaram Village, Ambattur Taluk, Thiruvallur District, measuring to an extent of 630 sq. ft. by the consideration of representation dated 14.09.2010.

2. Learned Counsel appearing for the Petitioner submitted that the Petitioner had purchased the above said property by virtue of sale deed dated 26.02.1998 vide document No. 1042/1998 on the file of the Sub-Registrar, Sembiam, for valuable consideration. From the date of purchase, the Petitioner is also in possession and enjoyment of the same without any interruption whatsoever from anyone and even the mutation of the said property has also taken place. The records relating to the mutation and also the sale deed dated 26.02.1998 show that the Petitioner is the absolute owner of the land in question. While so, the Petitioner, on 13.09.2010, went to see his property, wherein he has found that there is an over head water tank in his property. An enquiry, it was informed that the 2nd

Respondent has constructed the over head water tank in his patta land without any intimation. Thereupon, the Petitioner went to the 2nd Respondent and asked them as to how the over head water tank was constructed in the Petitioner's land without any prior permission or notice. But, there was no reply from the 2nd Respondent, therefore, the Petitioner has filed the present writ petition with the aforesaid prayer.

3. A counter has been filed by the 2nd Respondent refuting all the allegations made by the Petitioner stating that the Petitioner is not the owner of the property comprised in S. No. 1057/2, T.S. No. 6 and 7 of Madhavaram Village. Further, it was stated that the Town Survey Register of the village reveals the said T.S. Nos. 6 and 7 stand in the name of M.M.D.A., Government of Tamil Nadu. Therefore, the Municipality has chosen to construct a overhead water tank about five years back for the supply of water to the residents of the locality.

4. Heard the learned Counsel appearing on either side and perused the materials available on record.

5. The overhead water tank was put up in the land in question five years ago by the Respondents. Admittedly, at the time of raising the overhead water tank, the Petitioner has not objected for the same. Therefore, it is too late for the Petitioner to raise any objection by filing the present writ petition. Hence, as per the counter filed by the 2nd Respondent, I am of the view that there is a disputed question of fact in respect of the land, in which, the 2nd Respondent has put up the overhead water tank. Therefore, this Court cannot issue any direction to the 2nd Respondent to demolish the said water tank, when the Respondents deny the title of the Petitioner upon the land in question. On the other hand, since the Petitioner is claiming that the 2nd Respondent has wrongly encroached upon the Petitioner's patta land covered in sale deed dated 26.02.1998, it is left open to the Petitioner to approach the Civil Court by filing the civil suit challenging the action taken by the 2nd Respondent.

6. With the above observation, the present writ petition is dismissed. No Costs.