

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29/11/2004

Coram

The Honourable Mr. MARKANDEY KATJU, Chief Justice  
and  
The Honourable Mr. Justice N.V. BALASUBRAMANIAN

W.A. No.4026 of 2004

V. Kumar ... Appellant

-Vs-

1. The District Collector  
Vellore District

2. The Commissioner  
Vellore Municipality, Vellore ... Respondents

Appeal under Cl.15 of the Letters Patent against the order  
dated 13-7-2004 passed in W.P. No.19591 of 2004

!For Appellant :: Mr. R. Margabandhu

^For Respondents :: Mr. V. Raghupathy, G.P.

:JUDGMENT

(Delivered by the Honourable The Chief Justice)

This appeal is preferred against the order dated 13-7-2004 passed by the learned single Judge, dismissing the writ petition filed by the appellant. Learned single Judge dismissed the writ petition on the ground that the issue whether the appellant is a encroacher or not is a disputed question of fact and, therefore, the same cannot be gone into and decided by this Court, exercising powers under Art.226 of the Constitution of India.

2. We see no reason to interfere with the order passed by the learned single Judge. Grant of Writ under Art.226 of the Constitution is the 'discretionary' power of this Court. When the petitioner approaches this Court under Art.226 of the Constitution, he has not only to show that there is violation of law but must also show that equity lies in his favour. Where the petitioner is able to show only the violation of law but fails to satisfy the Court that equity is in his favour, no Writ would be issued. In the present case, there is no equity at all in favour of the appellant as the appellant

does not have any semblance of title over the property in question and prima facie he appears to be a rank trespasser, squatting over the public road. We are not inclined to exercise our discretion in favour of such a person like appellant as that would be perpetuating the encroachment. We see no reason to interfere with the order passed by the learned single Judge.

3. The appeal has no merits. It is dismissed. Connected W.A.M.P. No.7550 of 2004 is closed.

Jai

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