



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.37519 of 2016, 6313, 14434, 18454, 18977, 25404, 33410, 33688, 33834, 34398 & 34875 of 2018, 20823 of 2019, 3250 & 3728 of 2020, 34003, 34005, 34702, 34739 & 34983 of 2022, 21, 776, 2733, 2926, 2989, 3131, 5612, 5680, 12267, 12503, 12572, 12606, 12637, 12672, 12739, 12814, 12816, 12961, 13032, 13232, 13236, 13285, 13303, 13318, 13322, 13358, 13365, 13467, 13776, 13851, 13919, 13929, 14016, 14082, 14089, 14107, 14112, 14121, 14488, 14493, 14494, 14495, 14497 to 14505, 14507, 14508, 14509, 14510, 14511, 14514, 14548, 14551, 14555, 14558, 14563, 14633, 14638, 14639, 14640, 14641, 14644, 14749, 15919, 15997, 15998, 16420, 16543, 16558, 16628, 16741, 16743, 16845, 17055, 17095, 17203, 17450, 17231, 17738, 17865 & 17969 of 2023

and

W.M.P.Nos.20352 of 2017, 7806, 7807, 17050, 21764, 21765, 22379, 29565, 39300 & 39972 of 2018, 2599 & 20022 of 2019, 34158 of 2022, 9, 3026, 3094, 15846, 13023, 13718, 13720, 13981, 13984 to 14000, 14024, 14029, 14031, 14032, 14040, 14114, 14120, 14122, 14124, 14125, 14127, 15797, 16598 & 16837 of 2023

W.P.No.37519 of 2016:

S.Sakkarai

... Petitioner

Vs.

1.The Tahsildhar
Dharmapuri Taluk
Dharmapuri District.



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2.The Taluk Surveyor
Dharmapuri Taluk
Dharmapuri District.

3.The Village Administrative Officer
Sidhankotti Village
Kuppur Post
Dharmapuri Taluk
Dharmapuri District.

4.Sakthi

5.Veeramani

6.Munuswamy

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the 1st respondent to consider and pass orders on the petitioner's representation dated 19.09.2016 by taking action to measure the lands i.e., 0.05 Ares in S.No.229/5, 0.06 Ares in S.No.229/6, 0.10 Ares in S.No.229/9, 0.16 Ares in S.No.229/11 and 0.02 Ares in S.No.229/2 of Chithankottai Village, Dharmapuri Taluk and District.

For Petitioner : Mr.A.Ilaya Perumal

For R1 to R3 : Mr.J.Ravindran
Additional Advocate General
Assisted by Mr.T.Arun Kumar
Additional Government Pleader

For R4 to R6 : No Appearance



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COMMON ORDER

All these batch of writ petitions are instituted mainly for the relief of directing the respondents to survey the land belonging to the petitioners or raising certain objections to survey the land belonging to the contesting parties or to measure the other lands and fix the boundaries.

2. Several writ petitions are filed to direct the official respondents to survey the land and fix the boundaries by invoking the provisions of the Tamil Nadu Survey and Boundaries Act, 1923. Issuing a direction, either to consider the representation submitted by the petitioners or to direct the authorities to conduct survey of the land belonging to the any one of the parties would create further dispute amongst the parties. Such directions without adjudication on merits would do no service to the cause of justice and either of the parties will be back again to the High Court by way of another writ petition and it ends in multiplicity of litigations by not resolving the issues between the parties. Thus, the practice of issuing a direction to dispose of the representation to survey the land or a direction to survey the land without adjudication on merits is not desirable at all circumstances.



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3. All these writ petitions are filed either seeking a direction to consider the representation or to conduct survey or not to conduct survey or to conduct re-survey or otherwise. This being the relief sought for, issuing directions without adjudication on merits are causing prejudice to any one of the parties and therefore, this Court thought fit to consider the scope of the Tamil Nadu Survey and Boundaries Act, 1923 so as to understand pre-constitutional situation that was prevailing and post-constitutional changes and developments that has occurred. That apart, the context, purpose and object for the enactment i.e., the Tamil Nadu Survey and Boundaries Act, 1923 and the present context and the scope of the Act for conducting survey and to fix boundaries under the pre-constitutional Statute is to be looked into.

4. Statutes are to be interpreted pragmatically and practically, more specifically in the perspective of constitutional vision and considering the fact that the Tamil Nadu Survey and Boundaries Act, 1923 was enacted hundred years back. The definition and the scope cannot be interpreted for the purpose of unsettling the settled issues.



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5. The very purpose and object of the Act is to settle the issues and on account of efflux of time, the settled issues long back under the provisions of the Act cannot be unsettled now at the instance of any one of the parties. This exactly is happening on many occasions, since the original settlements were almost concluded and the Government is in the process of maintaining the survey and the boundaries for revenue and record purposes. Thus, the Government authorities are to be doubly cautious, while entertaining applications to survey or to re-survey the lands and fix the boundaries in respect of the settled boundaries.

6. Let us consider the provisions of the Act:

Section 3(i) defines “Estate” means

- (a) any permanently-settled estate whether a Zamindari, Jagir, mitta or palaiyam;
- (b) any portion of such permanently-settled estate which has been separately registered in the office of the Collector;
- (c) any unsettled palaiyam or jaghir;
- (d) any inam village of which grant was made or has been confirmed by the British Government.



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7. Sub Clause (e) (ii) defines Government land. “Government land” means any land not forming an estate or any portion thereof.

8. Chapter II provides the Survey of Government Lands. As per the definition of the Government land under the Act any land not forming an estate any party thereof under the Government land.

9. The learned counsel for the petitioners reiterated that the lands, which all are not governed under the definition of “Estate” or the “Government land” and it includes private lands. It is contended that the survey and fixing of the Boundaries Act cannot be restricted, since the scope of the Act is to conduct survey wherever there is a doubt about boundary or otherwise, when brought to the notice of the Government.

10. The procedures for survey of the Government lands are enumerated under chapter II. Section 9(1) stipulates that “*The survey officer shall have power to determine and record as undisputed any boundary in respect of which no dispute is brought to his notice*”.



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11. Section 10(1) denotes *“Where a boundary is disputed, the survey officer, after making such inquiry as he considers necessary, shall determine the boundary and record it in accordance with his decision. The survey officer shall record in writing the reasons for his decision”*.

12. Importantly, Section 14 stipulates *“Any person deeming himself aggrieved by the determination of any boundary under Section 9, 10 or 11 may subject to the provisions of the Parts II and II of the Indian Limitation Act, 1908 institute a suit within three years from the date of the notification under Section 13 to set aside or modify the said determination and the survey shall, if necessary, be altered in accordance with the final decree in the suit and the alteration, if any, shall be noted in the record”*. The plaintiffs in such suit shall join as parties to it all persons whom he has reason to believe to be interested in the boundary which is the subject of the suit.

13. The very scheme of the Act unambiguously amplifies that the final arbitrator is the Civil Court of Law and the surveyor cannot entertain any dispute between the parties regarding boundaries or title disputes or



otherwise. While enumerating the procedure for conduct of survey under Chapter II of the Act, Section 14 indicates that in the event of any grievance regarding such fixation made by the surveyor, the parties are at liberty to approach the Civil Court even for determination of any boundary under Section 9, 10 or 11 i.e., to say undisputed or disputed or otherwise.

14. Chapter III of the Act deals with the Survey of Estates:

15. The Survey of Estate is to be conducted strictly with reference to the definition of the “Estate” under Section 3(1) of the Act. It is needless to state that the authorities are not empowered to entertain any application beyond the scope of the provisions of the Act nor they are empowered to interpret and expand the scope of the Act for the purpose of entertaining any and every application filed by persons. Once an application is submitted, the competent authorities are duty bound to determine, whether the applications and the relief sought for in the application is falling within any one of the categories under the provisions of the Survey and Boundaries Act and if not such applications are liable to be rejected *inlimine*.



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16. Section 20(1) stipulates *“On the application of the proprietor of an estate in which any survey has been made, the [State Government] or any officer, or authority to whom this power may be delegated by it, may direct the survey officer to apportion among the holders of the lands or persons interested in the boundaries which have been surveyed the whole or a specified portion of the cost of such survey; provided that no tenant under a proprietor shall be called upon to pay a larger sum on account of such survey than he would be liable to pay if he held his land directly under the Government”*.

17. The above Section 20 stipulates that if any application has been made by the proprietor of an “Estate” in which any survey has been already made, the authorities concerned **may** direct the Survey officer to apportion among the holders of the lands or persons interested in the boundaries which have been surveyed the whole or specified portion of the cost of such survey.

18. The language employed in Section 20(1) is “May” and not “Shall” therefore, it is the discretion of the authorities competent to entertain an application or reject the application as the case may be.



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19. Question arises, whether the authorities are empowered to entertain all the applications submitted by the persons for the purpose of fixing boundaries in respect of their estate. The intention, purpose and object of the Act are to be taken into account by the authorities while taking a decision for conducting survey, by invoking powers under Section 21 of the Act. Therefore, all the applications cannot be entertained indiscriminately without ascertaining the fact whether it is necessary to conduct such survey or fix boundary.

20. The discretion conferred on the authorities are to be exercised prudently with due diligence and in accordance with the provisions of the Act. If at all there is any dispute between two persons, the authorities have to relegate the parties to the civil Court of law instead of unsettling the issues between two private parties claiming title or otherwise. In this regard, it is the duty of the Government to issue appropriate guidelines to the subordinate authorities for the purpose of entertaining the applications under the provisions of the Survey and Boundaries Act. The scope of the Act cannot be expanded for the purpose of conducting survey and to fix boundaries in



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respect of the private dispute between the parties. In the event of doing so, the same would cause prejudice to any one of the parties, as the parties may take undue advantage of the survey conducted by the surveyors appointed by the Government. This exactly is the reason, why this Court has emphasised that settled boundaries of the Act cannot be unsettled now after several years and in the event of any issues, it is preferable to relegate the parties to the Civil Court of Law for the purpose of establishing their rights independently with reference to the documents and evidences available on record.

21. In the above context, it is relevant to rely on Section 35 of the Indian Evidence Act, 1872, which states *“Relevancy of entry in public record or an electronic record made in performance of duty. - An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record or an electronic record is kept, is itself a relevant fact.* Therefore, the survey and boundaries fixed by the authorities are not conclusive proof of title, ownership or civil rights. In the event of any dispute



regarding boundaries, the final arbitrator is the civil court of law even under section 14 of the Survey and Boundaries Act , 1923. Therefore, any party attempting to resolve the issues by conducting survey under the Act at not circumstances be encouraged by the authority and in the event of any dispute or in case the survey has already been conducted and the boundaries are fixed, the authorities shall reject the application with a liberty to approach the civil Court of law for the purpose of establishing their rights.

22. The learned Additional Government Pleader made a submission that the respondents are not entertaining every application submitted by the persons for conducting survey or fixing boundary. There are four categories of applications, which are entertained and dealt with by the authorities by following the guidelines issued by the Government and within the time limit prescribed in the Government orders for disposal of such applications. The types and land transfer are described as under:



Types of Land Transfer:

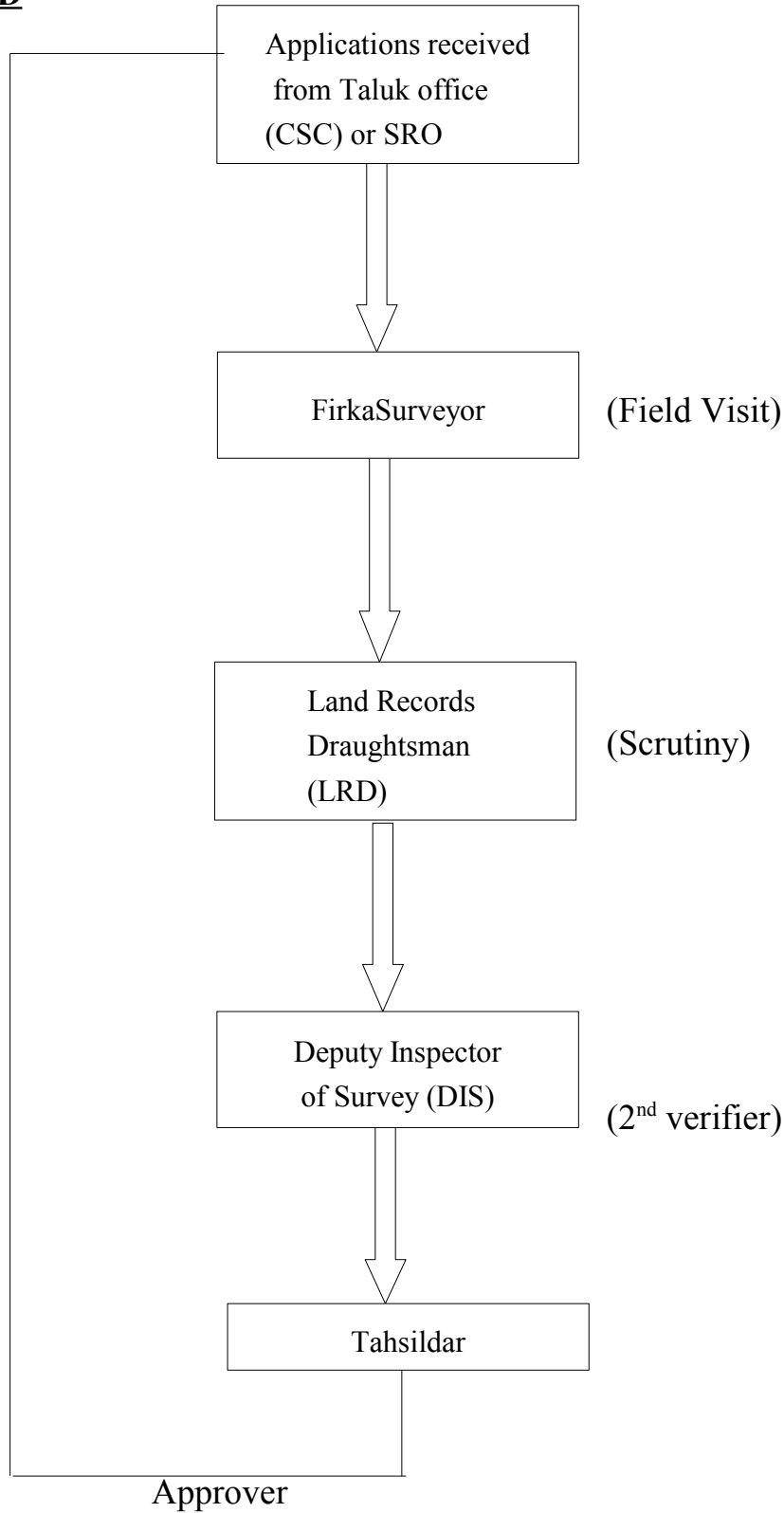
<i>S.No</i>	<i>Nature of Transfer</i>	<i>Authority</i>	<i>G.O / Rule / Manual</i>	<i>Competent Authority</i>	<i>Time fixed as per G.O</i>
1	Application received through sub-register office-Sub-Registrar Transfer Registry (STR) (ISD/NISD)	Revenue Standing Order (RSO-31)	1.G.O.210 Revenue SS(II) Dept. dated: 08.07.2011 2.G.O.303 Revenue SS(II) dated: 27.12.2016	ISD-Tahsildar NISD-Zonal Deputy Tahsildar	ISD-30 days NISD-15 days
2	Revenue Transfer Registry (RTR)				
3	By the way of inheritance (by submitting Legal Heir Certificate, Death Certificate, Patta copy)	Revenue Standing Order (RSO-31)	I.G.O.210 Revenue SS(II) Dept. dated: 08.07.2011	NISD-Zonal Deputy Tahsildar	NISD-15 days
4	F-Line application (Field line Measurement)	Chain Survey and Land Records Manual-Part-II (page no.13)	Based on Announcement No.7 Dated: 24.09.2021	Tahsildar	90 days from the date of payment for measurement of land (This office Circular Q5/20403/20 dated: 15.03.2021)

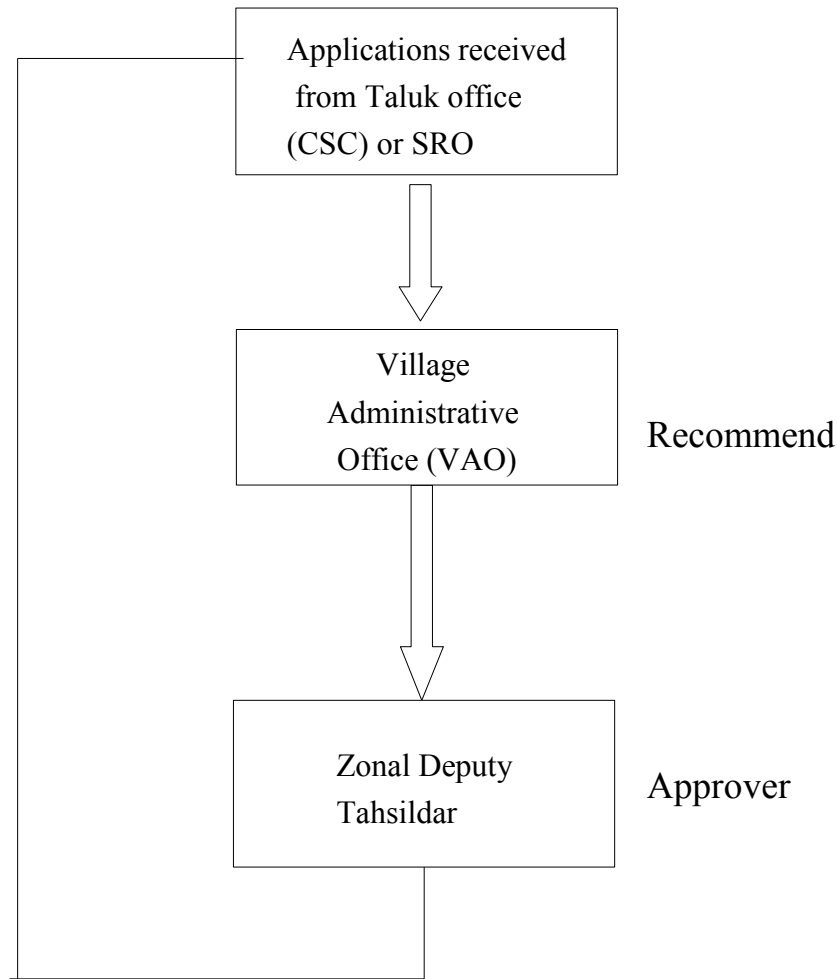


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Workflow
OPT-ISD

W.P.No.37519 of 2016 &





Appeal for patta transfer application

As per rule Revenue Standing Order (RSO) 31, authority to issue final order for patta transfer application is given to Tahsildar.

Revenue Divisional officer can issue order for changes / corrections in patta transfer application by getting remarks from Tahsildar / Surveyor / DIS and issue final order.



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23. Online Patta Transfer (OPT) involving subdivisions are dealt with by the competent authorities by following the procedures. Applications submitted by the persons are received from Taluk Office and based on the applications, field inspections are conducted by the Frika Surveyor and the Land Records Draughtsman scrutinises the applications, which are to be verified by the Deputy Inspector of Survey. The final decision is taken by the Tahsildar holding jurisdiction, who passes an order. During the process of deciding the applications, it must be ensured that such applications submitted by the persons, which are falling under the provisions of the Act alone is dealt with and if it is found that there is a dispute between the parties regarding title, ownership or boundary, then it is preferable that the parties are relegated to the Civil Court of Law instead of unsettling the issues between the parties.

24. The scope of the Act is to be now understood and interpreted with reference to the present day situation, since the Department is in the process of maintenance of survey records and revenue records. The Act originally intended to settle the survey and boundaries and the said processes had already been concluded long back and therefore, the authorities are expected



to keep in mind that those settled boundaries cannot be unsettled by conducting survey. They are in the process of maintaining the survey records and to that extent the applications are to be entertained and in respect of other disputes no applications under the provisions of the Act can be entertained and the parties are to be relegated to the Civil Court of Law.

25. A distinction is to be drawn with reference to the survey and boundaries of lands in pre-independence and pre-constitutional era and with reference to the present day context, where the survey and boundaries were already been concluded on account of the fact that 100 years had lapsed, since the commencement and enforcement of the Act.

26. Regarding Online Patta Transfer (OPT) and Non Involving Sub Divisions, the authorities on receipt of applications from the individuals are referring to the Village Administrative Officer for conducting field inspection and recommendations and thereafter, the zonal Deputy Tahsildar has got powers to prove the same. Such procedures are followed for issuing Online Patta Transfer where sub divisions are not involved.



27. Based on the orders of this Court passed par in the writ petitions, the Government issued G.O.Ms.No.370, Revenue and Disaster Management Department dated 21.07.2020.

28. The learned Additional Government Pleader brought to the notice of this Court that such procedures are comprehensive in nature and the authorities are bound to follow the same and in the event of lapses, negligence, dereliction of duty, the Government order itself stipulates initiation of Departmental proceedings against such officials and in the event of any corrupt practices, vigilance actions are also to be initiated based on the guidelines issued by the Government.

29. In respect of these guidelines several applications / cases are filed and therefore, the respondents are bound to look into lapses, negligence or dereliction of duty and also the corrupt practices prevailing at the field level while processing the application and initiate effective and efficient steps to ensure that the applications submitted are dealt with in accordance with the provisions of the Act, without any violation or deviations. The authorities in



this regard are to be sensitised by conducting review meetings or otherwise and ensure that violations are viewed seriously.

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30. In view of the fact that all these writ petitions are filed seeking a direction for disposal of the representation to conduct survey and fix the boundary or not to conduct survey and fix boundaries or otherwise, The Government has already issued guidelines in this regard. Thus, no further consideration is required.

31. The persons submitting an application must be provided with information about the seniority of the application and such procedure must be followed. The authorities, on receipt of any application, shall register the same in a register to be maintained in every survey office and the seniority number of the application is to be communicated to the person concerned. Thereafter, such applications are to be taken into consideration in accordance with the seniority and orders are to be passed by following the procedures strictly in accordance with the provisions of the Act.



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32. The learned Additional Government Pleader appearing on behalf of the respondents brought to the notice of this Court that such a procedure has already been followed by the authorities. Thus, submitting an application and immediately filing a writ petition without providing an opportunity to the authorities to consider the same, at no circumstances be encouraged by the High Court.

33. In the event of issuing a direction to consider the representation or to conduct a survey, the other aggrieved persons, who all are waiting for long years would be prejudiced and such a situation would arise only if an order from the High Court is obtained, then alone the survey is to be conducted and not otherwise. All such applications filed by the aggrieved persons are to be dealt with uniformly, consistently and by following the seniority and by obtaining an order of direction from the High Court to dispose of the representation. The right of other aggrieved persons cannot be deprived nor may they be prejudiced otherwise. In the event of any urgency or otherwise, reasons must be recorded by the authorities for over-looking the seniority. In all other circumstances, the seniority of the applications would be followed scrupulously for the purpose of considering the same without causing



prejudice to any of the aggrieved persons, since all the aggrieved persons, who all are waiting and longing to secure relief from the Government authorities are to be treated equally without any discrimination.

34. The power of judicial review of the High Court under Article 226 of the Constitution of India is to ensure that the processes through which a decision is taken by the competent authorities is in consonance with the Statutes and Rules in force, but not the decision itself. Therefore, High Court in writ proceedings cannot conduct a roving enquiry with reference to the grounds raised between the parties regarding title, ownership, civil rights or otherwise. Thus, the orders passed in some of the writ petitions directing the competent authorities to relegate the parties to the Civil Court is to be followed and all such parties are at liberty to approach the competent Civil Court of law.

35. The petitioners have raised a submission that in the event of boundary dispute, the parties have to approach the Surveyor and only thereafter, they will have to go under Section 14 of the Act for approaching the Civil Court. Such a submission is based on misconceptions. The very



purpose and object of the pre-independence Act enacted in the year 1923 now cannot be interpreted for the purpose of resolving the boundary dispute between the parties. Filing an application under the Survey and Boundaries Act is an option for a person, if there is any deviation or difference or the dispute is falling within the ambit of provisions of the Act. In all other circumstances, any person having dispute over the boundary, title, ownership or otherwise is at liberty to approach the Civil Court.

36. Section 9 of the Code of Civil Procedure unambiguously contemplates that *“The Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred”*.

37. Therefore, a special enactment has no relevance with reference to a right of the parties to approach the competent Civil Court of law to resolve all nature of civil disputes including boundary dispute, survey dispute, title dispute, ownership or otherwise. Therefore, neither the parties nor the authorities need to create an impression that in the event of boundary dispute, the parties have to approach the authorities at the first instance. It is not



required that the aggrieved persons, in the event of boundary dispute has to approach the authorities for fixing the boundary, they are at liberty to approach the Civil Court of law under Section 9 of the Code of Civil Procedure, which is unambiguous in this regard.

38. Submitting an application for fixing boundary is an option available to the aggrieved persons. Once an application is filed, whether the application is entertainable under the provisions of the Act is to be determined by the authorities and only if it is falling within the ambit of the Act, then alone the survey or fixing of boundary is to be undertaken. Even in this case, the authorities are bound to relegate the parties to the competent Civil Court of law under Section 14 of the Act.

39. It is contended by the petitioner that the authorities are making certain findings regarding the title, ownership in their order, while rejecting the applications. Such findings made by the authorities either in the patta proceedings or in the proceedings under the Survey and Boundaries Act are restricted and to be understood only for the purpose of arriving a conclusion under the provisions of the Act and the said patta proceedings or the



proceedings under the Survey and Boundaries Act would not confer any title or be taken as a conclusive decision, more specifically under Section 35 of the Evidence Act.

40. Accordingly, the respondents are directed to consider the representations / applications submitted by the petitioners in the order of seniority and by following the procedures as contemplated under the Governmental orders and in consonance with the provisions of the Survey and Boundaries Act, 1923 and pass appropriate orders on merits and in accordance with law. Wherever the applications are already disposed of and appeals provided under the Act has been filed, then such appeals are to be decided on merits and in consonance with the provisions of the Survey and Boundaries Act.

41. In cases, where the authorities have already rejected an application for conducting survey or to fix boundary and has relegated the parties to the Civil Court of law to resolve their issues, all such parties are at liberty to approach the Competent Civil Court of Law, by impleading all the necessary parties for the purpose of adjudication of issues to establish their civil rights.



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42. The respondents are directed to ensure that unnecessary and frivolous applications to conduct survey or to fix boundary are not entertained in violations of the provisions of the act or in violation of the guidelines issued by the Government. In all such cases, actions are to be initiated against such officials under the provisions of the Service Rules for lapses, negligence or dereliction of duty.

43. In the writ petitions, where any one of the parties has instituted Civil Suit, which is pending before the competent Civil Court of law, then the revenue authorities / survey authorities are not empowered to decide the issues and the parties are bound to resolve the issues before the competent Civil Court of law and thereafter approach the revenue authorities competent for the purpose of grant of patta or to fix boundary or otherwise.



44. With the above observations, all the writ petitions are disposed of.

Consequently, the connected miscellaneous petitions are closed. There shall be no order as to cost.

19.06.2023

Jeni

Index : Yes

Speaking order

Neutral Citation : Yes

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S.M.SUBRAMANIAM, J.

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