



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :09.09.2015

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P(MD) .No.15456 of 2014

Natarajan ... Petitioner

Vs.

1.The District Collector, Pudukkottai District,
Pudukkottai.

2.The Tahsildar, Karambakudi Taluk,
Pudukkottai District.

3.Meenakshi ... Respondents

Prayer: This Writ Petition has been filed under Article 226 of Constitution of India praying for a Writ of Certiorarified Mandamus, calling for the records pertaining to the order of the second respondent in Na.Ka.No.720/14/A1, dated 04.09.2014 and quash the same as arbitrary and illegal and consequently directing the second respondent to survey the lands in S.No.555/26A & 556/2A of Mangottai Village, Karambakudi Taluk, Pudukkottai District with Police Protection.

For petitioner	: Mr.K.Baalasundharam
For R1 & R2	: Mr.M.Murugan Govt. Advocate
For R3	:Mr.D.Ramesh Kumar

ORDER

The Writ Petition has been filed praying for a Writ of Certiorarified Mandamus, calling for the records pertaining to the order of the second respondent in Na.Ka.No.720/14/A1, dated 04.09.2014 and quash the same as arbitrary and illegal and consequently directing the second respondent to survey the lands in S.No.555/26A & 556/2A of Mangottai Village, Karambakudi Taluk, Pudukkottai District with Police Protection.

2.Heard Mr.K.Baalasundharam, learned counsel appearing for the petitioner, Mr.M.Murugan, learned Government Advocate appearing for the respondents 1 & 2 and D.Ramesh Kumar, learned counsel appearing for the respondent No.3.

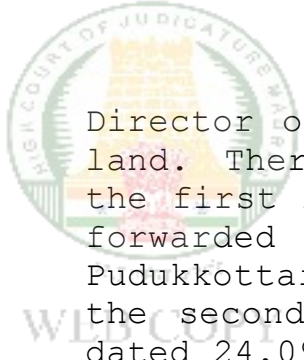
<https://hcservices.ecourts.gov.in/hcservices/>

3. By consent, this Writ Petition itself is taken up final disposal.



4. In the affidavit filed in support of the Writ Petition, it has been averred that the Survey No.555/26A and 556/6A are the petitioner's ancestral properties. The aforesaid properties were purchased several years ago by the petitioner's father. His father died in the year 1977 leaving behind his four sons. In the family partition that took place about 33 years ago, in which, the survey No.555/26A was allotted to in favour of the petitioner. The petitioner is in possession and enjoyment of the same. Patta has already been transferred in the name of the petitioner in respect of the said properties. On the western side of the properties, there is a Highway road between Alangudi to Adhanakkottai. The petitioner has been using the properties to reach the main road. The third respondent owns the property on the southern side of the petitioner's property. He has been using the property as a pathway to reach the road. The third respondent objected the petitioner for using his property as pathway on the ground that the property which the petitioner is using as a pathway comes within her survey number. Therefore, in order to resolve the dispute, the petitioner's brother Rajendran has submitted an application to the second respondent on 16.09.2010 to survey his land and fix the boundary stones.

5. It is the further case of the petitioner that the Taluk Sub Inspector of Survey, Karambakudi has issued a notice, dated 21.12.2011 informing the petitioner that an enquiry shall be conducted on 27.12.2011 regarding the survey of land in S.No.555/26A. The said notice was also served on the third respondent. The Officials came to the property on 27.12.2011. The petitioner appeared before the survey officials with all relevant records including the patta for S.No.555/26A and the third respondent did not appear and hence the Officials declined to survey the lands without the presence of the third respondent. The petitioner submitted another application and based on the application, the Sub-Inspector of Survey issued a notice, dated 14.09.2012 requiring the petitioner to appear before him on 18.09.2012 with relevant records for the purpose of surveying the petitioner's land. At that time, the third respondent and his sons Maharaja and Cholan obstructed the officials to survey the land and hence, a criminal complaint was lodged with the Sub-Inspector of Survey against the third respondent and her sons and the case was registered in Cr.No.235 of 2012 for the alleged offences punishable under Sections 294(b), 353 and 506(ii) IPC. Thereafter, the police filed a final report. After completion of the trial, the learned Judicial Magistrate, Alangudi convicted the third respondent and her sons to undergo six months Rigorous Imprisonment and to pay a fine of Rs.1000/-. The petitioner made another representation to the first respondent on 07.01.2013 <https://hccases.mca.gov.in/hccases/> to survey the land and fix the boundary stones. But the petitioner was directed to approach the Assistant Director of Survey. The petitioner had also approached the Assistant



Director of Survey, but he has not taken any steps to survey the land. Thereafter, the petitioner made another representation to the first respondent on 20.09.2013 and again, the first respondent forwarded the same to the Assistant Director of Survey, Pudukkottai and he has forwarded the same for necessary action to the second respondent by his proceedings in na.Ka.No.A1/6075(2), dated 24.09.2013.

6.It is also the case of the petitioner that the second respondent instead of surveying the lands and fixing the boundaries in S.No.555/26A and 556/6A, passed an order in his proceedings in Na.Ka.S2/9779/2013, dated 07.10.2013 and then intimated that the petitioner's land cannot be surveyed since eastern boundary is that of the third respondent and a case was registered against the third respondent and her sons and which ended in conviction. Finally, in spite of the request, the petitioner submitted a another petition on 22.08.2014 on the day of Agriculturists Grievances Reddressal Day. But the respondents refused to survey the land and passed the impugned order informing that if the land is surveyed, it will create law and order problem and hence, directed the petitioner to approach the Civil Court. Aggrieved over the same, the petitioner has filed the present writ petition.

7.The learned counsel appearing for the petitioner submitted that the petitioner's lands in Survey No.555/26A and 556/6A were purchased several years ago by the father of the petitioner. The third respondent is objecting the petitioner to use the properties as pathway. That is why, the petitioner has repeatedly sent representations to the respondents to survey the land and fix the boundary stones. On an earlier occasion, on 18.09.2012, when the Sub-Inspector of Survey came for survey of the land, the third respondent created a law and order problem. Hence, a criminal complaint was lodged against the third respondent and his sons. They ended in conviction. Now, when the petitioner made an application before the respondents 1 & 2, the respondents by citing the earlier instance, now refused to survey the land. Since earlier on one occasion, the third respondent has created a law and order problem, the respondents cannot refuse to survey the land by citing the said reason.

8.The learned counsel for the third respondent submitted that there is a serious title dispute between the petitioner and the third respondent, that is why, the third respondent has objected the same and thus opposed the writ petition.

9.In normal circumstances, this Court would direct the respondents to survey the land. But in the instant case, I find that there is a serious dispute of title between the petitioner and the third respondent, that is the reason why, the third respondent is denying for surveying the land.

10.In such circumstances, I do not find any justification to



direct the respondents 1 and 2 to survey the land. Hence, the writ petition is dismissed. However, the petitioner can work out his remedy before the appropriate Civil Court. No Costs.

Sd/-

Assistant Registrar (CO)

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/True Copy/

Sub Assistant Registrar

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To

1.The District Collector,
Pudukkottai District,
Pudukkottai.

2.The Tahsildar,
Karambakudi Taluk,
Pudukkottai District.

+1CC to Mr.D.Ramesh Kumar Advocate Sr.No.53755

+1CC to Spl.Government Pleader Sr.No.53331

GJM/SKS/RR/12.10.15-4P-5C

W.P (MD) .No.15456 of 2014
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