

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.03.2016

PRONOUNCED ON : 12.04.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.7715 of 2016

P.Britto

... Petitioner

Vs.

- 1.The Secretary,
Revenue Department,
Government of Tamilnadu,
Secretariat,
Fort St.George,
Chennai-600 009.
- 2.The Under Secretary,
Revenue Department,
Fort St.George,
Chennai-600 009.
- 3.The Collector,
Collectorate,
Tirunelveli,
Tirunelveli District.
- 4.The Block Development Officer,
Melanedinallur,
Tirunelveli District.
- 5.Panchayat President
of Kulasegaramangalam,
Sangarankovil Taluk,
Tirunelveli District.
- 6.Tahsildar,
Sankarankovil,
Sangarankovil Taluk,
Tirunelveli District.
- 7.The Deputy Tahsildar (Zonal),
Sankarankovil,
Tirunelveli District.

8.Mr.Dharmaraj,
S/o.late Thangasamy,
Nadu Street, Thannuthu Village,
Sangarankovil Taluk,
Tirunelveli District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records from the 3rd respondent in Na.Ka.No.3/20485/2015, dated 18.01.2016 and to quash the same and consequently, to direct the 6th respondent to survey the petitioner's property based on the Gift Deed No.2252/2015, dated 30.09.2015 in the presence of the petitioner.

For Petitioner : Mr.D.Muthukumar

For Respondents : Mr.M.Digvijaypandian,
Addl.Govt.Pleader (For RR 1 to 7)

* * * * *

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order in Na.Ka.No.3/20485/2015, dated 18.01.2016, passed by the 3rd respondent and to quash the same and consequently, to direct the 6th respondent to survey the petitioner's property based on the Gift Deed No.2252/2015, dated 30.09.2015 in the presence of the petitioner.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner, inter alia, as follows:-

2-1.The petitioner's father Mr.Packiasamy (retired headmaster) purchased a piece of land with constructed house in Old Survey No.427/3 (New No.635/20) in Thannuthu Village in the year 1973, by way of registered Sale Deed No.2056/1973. After purchasing the property, the petitioner's father was in possession and enjoyment of the said property. Thereafter, the petitioner's father gifted the said property in favour of the petitioner on 30.09.2015 by way of registered Gift Deed.

2-2.When the petitioner's father purchased the property in the year 1973, the boundaries were very clearly mentioned. The total extent of the property is 1749 sq.ft and the boundaries are East-West 33 feet, South-North 53 feet. The property adjacent to the petitioner's land belongs to one Mr.Michel Raj and he obtained the property by way of Settlement Deed No.522/2007 from his father, the 8th respondent

herein. The petitioner's father left more than three feet in the western side of their house to use the same to white wash the building and for proper ventilation. But, the 5th respondent, without any approval from the petitioner's father, laid a water pipeline in the petitioner's land to provide a water supply to the 8th respondent and it is causing great trouble to the petitioner and his family and further, the petitioner could not whitewash his house. In this regard, the petitioner has made representations to the 3rd respondent to remove the water pipeline belong to the 5th respondent-Panchayat. Since the petitioner's representation was not considered, the petitioner had moved this Court by filing W.P.No.30423/2015, in which this Court issued a direction to the 3rd respondent to consider his representation and to pass orders within eight weeks.

2-3. Pursuant to the order passed by this Court, the 3rd respondent issued a notice to the petitioner to appear before him on 11.12.2015. The petitioner appeared before the 3rd respondent on 11.12.2015 and explained that the very survey number mentioned in the enquiry notice itself is wrong and also has given a statement that the 5th respondent without any authority of law has laid the pipeline in the petitioner's land. Thereafter, the 3rd respondent passed the impugned order on 18.01.2016, rejecting the petitioner's request to remove the pipeline on the ground that the said pipeline is not in his land. In the impugned order, the 3rd respondent has mentioned that the land was surveyed by the Deputy Tahsildar (Zonal) and he has given a report stating that the said pipeline was not laid in the petitioner's land.

2-4. According to the petitioner, before surveying any land, the concerned Revenue Official has to issue notice to the parties. But, in the instant case, no notice was issued to the petitioner. Further, the 3rd respondent in his order mentioned that the petitioner's land was surveyed based on the patta issued by the 6th respondent under the Natham Land Revenue Scheme; but, the petitioner has already given a letter to the 6th respondent on 08.07.2009 to resurvey the land as per the Sale Deed and he has also paid the relevant fee for the same; but, the same was not considered. Hence, the petitioner has come forward with the present writ petition seeking to quash the impugned order dated 18.01.2016 passed by the 3rd respondent and to direct the respondents to remove the pipeline.

3. Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the official respondents and perused the materials available on record.

4.The learned counsel appearing for the petitioner has made a detailed argument, reiterating the contentions in the affidavit, and submitted that the pipeline was laid only in the petitioner's land. But, the impugned order has been passed by the 3rd respondent, in which he has stated that the subject land was surveyed by the Deputy Tahsildar (Zonal) and he has given a report stating that the pipeline was not laid in the petitioner's land. In this regard, the learned counsel appearing for the petitioner submitted that before conducting survey of the land, the respondents ought to have given notice to the petitioner. But, without giving notice to the petitioner, the survey has been conducted. Therefore, the impugned order passed by the 3rd respondent is not legally sustainable. Thus, the learned counsel appearing for the petitioner submitted that by quashing the impugned order, the official respondents could be directed to resurvey the land.

5.The learned Additional Government Pleader, by filing a detailed counter, submitted that the pipeline was not laid in the petitioner's land and the survey was conducted by the Deputy Tahsildar in a proper manner. The learned Additional Government Pleader has also submitted that at the time of surveying the land, the petitioner's father was present in the spot. In support of his contention, the learned Additional Government Pleader produced the photos taken at the time of surveying the land, which shows the presence of the petitioner's father in the spot at the time of surveying the land.

6.On verifying with the petitioner, the learned counsel for the petitioner has also confirmed that the person, who figured in the photos taken at the time of surveying the land, is only the father of the petitioner.

7.Under such circumstances, I am not inclined to accept the submission of the learned counsel for the petitioner that without his knowledge, survey was conducted. Further more, it is the case of the petitioner that the pipeline was laid in his land. Whereas according to the official respondents, the pipeline was not laid in the land of the petitioner. Therefore, the disputed questions of facts are involved in this case. When there are disputed questions of facts involved, this Court cannot entertain the writ petition, because this Court cannot conduct any roving enquiry while exercising power under Article 226 of the Constitution of India. The petitioner has to work out his remedy only before the civil court, if he has any grievance.

For the foregoing reasons, the writ petition is liable to be dismissed and accordingly, the same is dismissed. No costs.

ssv

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary,
Revenue Department,
Government of Tamilnadu,
Secretariat, Fort St.George,
Chennai-600 009.
 - 2.The Under Secretary,
Revenue Department,
Fort St.George, Chennai-600 009.
 - 3.The Collector, Collectorate,
Tirunelveli, Tirunelveli District.
 - 4.The Block Development Officer,
Melanedinallur,
Tirunelveli District.
 - 5.The Panchayat President of Kulasegaramangalam,
Sangarankovil Taluk,
Tirunelveli District.
 6. The Tahsildar, Sankarankovil,
Sangarankovil Taluk, सत्यमेव जयते
Tirunelveli District.
 - 7.The Deputy Tahsildar (Zonal),
Sankarankovil, Tirunelveli District.
- + 1 cc to Mr.D.Muthukumar, Advocate Sr 23052
+ 1 cc to The Govt.Pleader, Sr 23196

KR/18/4/16

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