



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 25.07.2016

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P (MD) No.12981 of 2016

Selvam

..Petitioner

Vs

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Tahsildar,
Sankarankovil Taluk,
Sankarankovil,
Tirunelveli District.

3.A.Veluchamy

4.Murugan

..Respondents.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the First Respondent to consider the representation of the Petitioner, dated 22.2.2016 on merits and in accordance with law and subsequently dispose of the same within the time frame fixed by this Court forthwith.

For Petitioner

:Mr.J.Sankarapandian
for M/s.S.Palani Velayutham

For Respondents
1 and 2

:Mr.J.Gunaseelan Muthiah
Govt.Advocate

ORDER

Heard the Learned Counsel for the Petitioner.

2.At this stage, Mr.J.Gunaseelan Muthiah, Learned Government Advocate takes notice on behalf of the Respondents No.1 and 2.

3.To avoid an avoidable delay, notice to the Respondents No.3 and 4 is dispensed with.

4.The Petitioner has focussed the present Writ Petition praying for passing of an order by this Court in directing the



First Respondent/The District Collector, Tirunelveli District, Tirunelveli, to consider his representation, dated 22.2.2016 on merits and in accordance with Law and later to dispose of the same within the time frame to be determined by this Court.

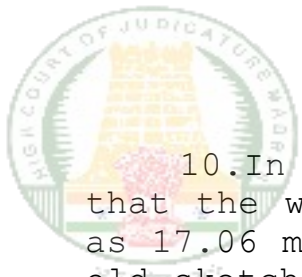
5. According to the Petitioner, the property bearing Survey No.322/3 measuring an extent of 1 acre and 14 cents is situated at Thevarkulam Village, Sankarankovil Circle, Tirunelveli District. His mother Muthammal purchased 1 acre and 5 $\frac{1}{4}$ cents leaving behind 8 $\frac{3}{4}$ cents in the said property during the year 1962 I.e., on 26.3.1962. Eversince from the date of purchase, the property was enjoyed by his mother without any hindrance or obstruction.

6. The stand of the Petitioner is that while the Petitioner's mother was alive, she executed a Gift Deed, dated 20.09.1990 in favour of her children by name Selvam and Samiraj. Now his mother is no more. Since the Petitioner is one of the sons of the deceased Muthammal and the property being a joint property belonging to several persons, the Revenue Department had issued joint patta in favour of all the owners of the said property. The Petitioner and his brother's name were also included in the Revenue Records.

7. As a matter of fact, originally the said Survey No.322/3 was as 3A3B in the old Village Map. At later point of time, the said Survey No.322/3B was purchased by one Chelliah Thevar on 23.11.1961 from one Sakkammal. The measurement in the said survey number during the said period is 1 Acre and 16 cents. One Madathiammal also purchased some extent of the property in the said survey number.

8. It comes to be known that after UDR Scheme, the said Survey No.322/3A was changed as Survey No.322/3 and Survey No.322/3B and Survey No.322/4, Survey No.322/5 and Survey No.322/7. The sub-divided Survey Nos. 322/4,5,6 and 7, later was converted into housing plots and one Veluchamy, son of Arunachala Thevar and Murugan, son of Arunachala Thevar had build up their residential houses. In the northern side, Survey No.322/3 was the joint property of the Petitioner and his cousins.

9. The house put up by the said Veluchamy and Murugan in Survey No.322/7 was measuring 17.0 meters prior to UDR Scheme and subsequently, it has given the measurement wrongly as 17.6 meters. The wrong measurement of excess portion of 0.6 meter does not belong to the said Veluchamy and Murugan. The excess area was encroached and construction was made by the said persons. The short-fall of 0.6 meter in their property was noticed during their partition among themselves. On knowing the same, the Petitioner submitted a representation before the First Respondent on 22.2.2016 for rectifying the said discrepancy by making proper measurement and drawing the plan.



10. In the said representation, the Petitioner had requested that the wrong measurement mentioned in Sr.No.322/7 in the sketch as 17.06 meters be corrected as 17.00 meters on the basis of the old sketch and new sketch, which was now available on record of his village. If necessary correction is made, the short-fall of the area which was tagged along with the property of the respondents by means of encroachment made by them, has to be recovered from them. In fact, the First Respondent has to give suitable instruction to the Second Respondent to make necessary correction in the measurement in the said survey numbers, wherein, an error had crept on record during UDR Scheme, pursuant to his representation.

11. At this juncture, this Court has perused the Petition/representation, dated 22.2.2016 submitted by the Petitioner, addressed to the First Respondent during the Grievance Day. In the said petition, in reality, the Respondents No.3 and 4 to the Writ Petition were shown as Respondents No.1 and 2. Suffice it for this Court to clearly point out that at para 6 of the petition of the Petitioner, dated 22.2.2016 (addressed to the First Respondent/The District Collector, Tirunelveli District, Tirunelveli), it was categorically mentioned that the Respondents 3 and 4 (in the Writ Petition) (R1 and R2 in the Representation/Petition) had encroached and put up construction in the punja land belonging to the Petitioner and they are damaging the same. Ultimately, in the representation of the Petitioner, dated 22.2.2016, it is specifically mentioned that 0.6 meters construction portion put up by the Respondents have to be demolished and a correction is to be made in respect of 0.6 meters in the map, which was wrongly shown/exhibited.

12. Therefore, it is latently and patently quite clear from the averments and the contents of the Petition of the Petitioner, dated 22.2.2016 submitted before the First Respondent/The District Collector, Tirunelveli District, Tirunelveli (on a Grievance Day) that the dispute is a private one between the Petitioner and Respondents No.3 and 4 to the Writ Petition. The relief sought for in the Petition of the Petitioner, dated 22.2.2016 is one of seeking to demolish the constructed portion of 0.6 meters put up/made by the Respondents 3 and 3 to the Writ Petition) who are arrayed as Respondents 1 and 2 in the Petition of the Petitioner dated 22.02.2016, for which only a civil suit is the appropriate remedy, in the considered opinion of this Court. In fact, the writ proceedings, are summary in nature and the disputed facts cannot be gone into by the Court of Law. Even though exercise of jurisdiction under Article 226 of the Constitution by the High Court in writ proceedings is one of discretionary, while exercising jurisdiction in the same, the Court of Law is to act with clear and utmost circumspection and caution.



13. Be that as it may, on a careful consideration of the entire gamete of the contents of the Petitioner's petition, dated 22.2.2016 addressed to the First Respondent/The District Collector, Tirunveli District Tirunelveli and also this Court taking note of the entire conspectus of the attendant facts and circumstances of the present case in an integral manner, comes to a resultant conclusion that the Petitioner has to approach only the competent Civil Court for seeking appropriate remedy in the manner known to Law and in accordance with Law. Viewed in that perspective, this Court is of the considered view that the filing of the present Writ Petition by the Petitioner is *per se* not maintainable, Consequently, the Writ Petition fails.

14. In fine, the Writ Petition is dismissed, leaving the parties to bear their own costs. It is made clear that the dismissal of the Writ Petition will not preclude the Petitioner to approach the competent Civil Court seeking appropriate remedy in the manner known to Law and in accordance with Law. It is open to the petitioner, in case, he files a Civil Suit, to raise all factual and legal pleas. No costs.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

1. The District Collector,
Tirunelveli District,
Tirunelveli.
2. The Tahsildar,
Sankarankovil Taluk,
Sankarankovil,
Tirunelveli District.

+1cc to Mr.S.PALANIVELAYUTHAM, ADVOCATE IN SR.NO. 39279
+1cc to M/S.THE SPECIAL GOVERNMENT PLEADER, SR NO: 38125

vsn
JA-ARK-PV-2.8.2016/4P:5C

W.P (MD) No.12981 of 2016

25.07.2016