

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.26406/2017 & WMP.Nos.28069 & 28070/2017

S.Ramasamy

...

Petitioner

Vs

1 The District Collector
Namakkal District.

2 The Tahsildar
Senthamangalam Taluka
Namakkal District.

...

Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance a Writ of Certiorarified Mandamus calling for the records relating to the impugned notice issued under section 7 of the Encroachment Act, dated 09.06.2017 by the 2nd respondent and quash the same and consequently, directing the respondents to conduct a combined measurements of the entire lands in S.No.76/1A, 76/2A, S.No.76/1, 79,S.No.85 and S.No.77 of Pommasamudram Village, Senthamangalam Taluk, Namakkal District to identify and demarcate the gifted property measuring about Acre 0.10 cents after issuing notice to all the land owners concerned within a time frame to be fixed by this Court.

For Petitioner : Mr.K.A.Mariappan

For R1 & R2 : Mr.M.Digvijay Pandian, AGP

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

By consent, the writ petition itself is taken up for final disposal. Mr.M.Digvijay Pandian, learned Additional Government Pleader accepts notice on behalf of the respondents.

2 The petitioner claims to be the owner of the land in S.No.76/2A, Pommasamudram Village, Namakkal Taluk and District, admeasuring to an extent of 2.06 acres through a registered Sale Deed bearing Doc.No.1344/1994 dated 12.12.1994. After the said purchase, the mutated the revenue records in his name and further claims that patta in respect of the land also stands in his name. The petitioner would further aver that the petitioner's vendor, after conveying 2.06 Acres of land in his favour, had retained a portion of the land on Eastern side, admeasuring to an extent of Acres 0.10 cents, which runs from North to South and connects the Hill situated on the Southern side of the property with the Sendamangalam Road on the Northern side. The petitioner would also aver that the recitals in the Sale Deed dated 12.12.1994 also speaks about the Easementary rights enduring in favour of the petitioner and the

petitioner had also executed a Settlement Deed in favour of his wife bearing Doc.No.911/1995 dated 14.08.1995, settling 0.25 cents of land along with the Easementary rights. The grievance expressed by the petitioner is that, all of a sudden, he was issued with the notice under section 7 of the Tamil Nadu Land Encroachment Act, 1905, and in response to the same, he submitted his reply dated 12.06.2017 pointing out the above said facts and also made a plea that if the concerned lands are surveyed and measured, his claim would get fortified and therefore, prays for survey and measurement of the lands and till such time, requested the respondents to defer further proceedings in terms of the above said notice. The petitioner, apprehending dispossession, came forward to file the present writ petition.

3 The learned counsel for the petitioner would submit that if survey and measurement of the land in question is done, then the plea projected by him would get fortified for the reason that apart from the balance extent of land in his favour, after executing the Deed of Settlement in favour of his wife, he has not encroached upon any other land and therefore, prays for appropriate orders.

4 *Per contra*, the learned Additional Government Pleader appearing for the respondents would submit that since the petitioner is having an effective alternate remedy under section 10 of the Land Encroachment Act, 1905, the present writ petition is not maintainable.

5 This Court has considered the rival submissions and also perused the materials placed before it.

6 In the light of the stand taken by the writ petitioner that if the lands in S.Nos.76/1A, 76/2B, 76/1, 85, 79 and 77 are surveyed and measured based on the revenue records as well as based upon his title deed, the true position would come to light, this Court permits the petitioner to submit an application to the jurisdictional Tahsildar / 2nd respondent herein for survey and measurement of the land in S.Nos.76/1A, 76/2B, 76/1, 85, 79 and 77, by paying prescribed fees within a period of two weeks from the date of receipt of a copy of this order and the 2nd respondent upon receipt of the same, shall entertain the said application if the papers are otherwise in order and after putting the concerned persons on notice, shall survey and measure the lands in question and depending upon the result of the same, is at liberty to take

action against the petitioner in accordance with law. The 2nd respondent is directed to complete the exercise within a further period of eight weeks from the date of receipt of the application for survey and measurement to be submitted by the petitioner. The respondents 1 and 2, till the disposal of the application for survey and measurement shall defer further decision in terms of the impugned notice dated 09.06.2017. It is also made clear that till the disposal of the said application, shall not create any third party rights in respect of the land in question.

7 The writ petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

[M.S.N., J.] [N.S.S., J.]
10.10.2017

Internet : Yes
AP

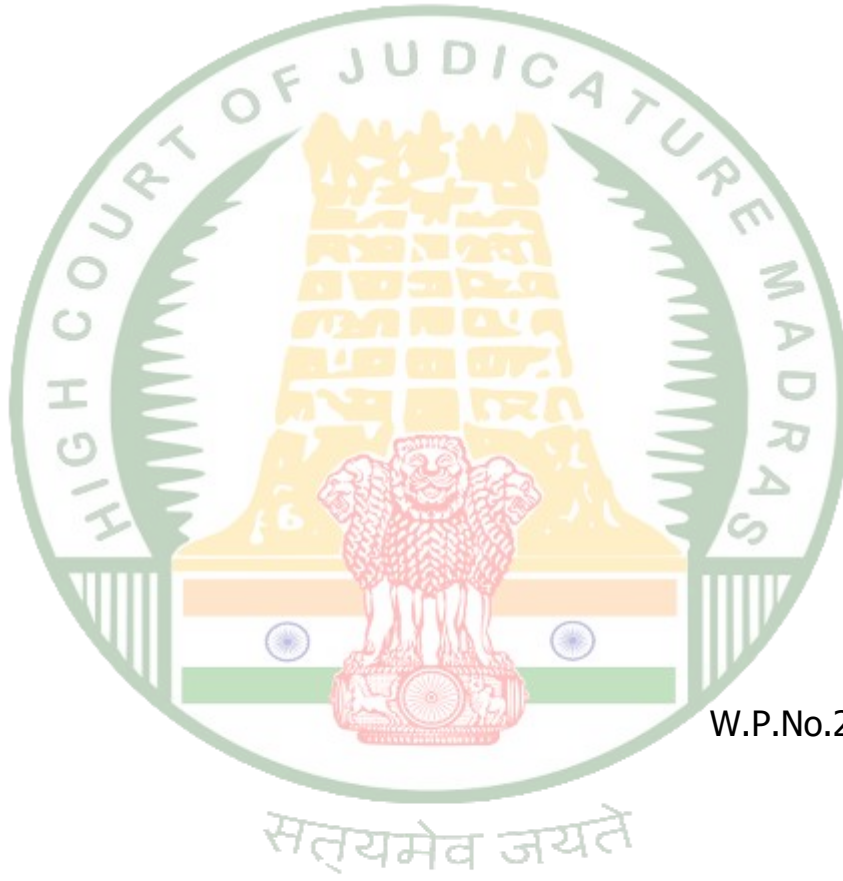
To

- 1 The District Collector
Namakkal District.
- 2 The Tahsildar
Senthamangalam Taluka
Namakkal District.

M.SATHYANARAYANAN, J.,

and
N.SESHASAYEE, J.,

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