



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.06.2017**

CORAM:

THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

WEB COPY

W.P. (MD) No. 24320 of 2016

and

W.M.P. (MD) .No. 17566 of 2016

G. Kanagaraj

.. Petitioner

-Vs-

1. The Tahsildar,
Thottiyam Taluk,
Trichy.

2. Head Taluk Surveyor,
Thottiyam Taluk,
Trichy District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the first respondent in O.Mu.A.Ka. Ma.4792/2016, dated 09.11.2016 and quash the same and directing the respondents to survey the land in Survey No.245/29, 11 and earmark the boundaries of the land as per the patta.

For Petitioner : Mr.M.Karthikeya Venkitachalapathy

For Respondents : Mr.D.Muruganandham

Additional Government Pleader

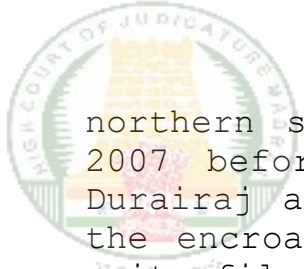
ORDER

This Writ Petition is filed for issuance of a Writ of a Certiorarified Manadamus, to call for the records from the first respondent in O.Mu.A.Ka.Ma.4792/2016, dated 09.11.2016 and quash the same and directing the respondents to survey the land in Survey No.245/29 & 11 and earmark the boundaries of the land as per the patta.

2. By consent the writ petition itself is taken up for final hearing.

3. According to the petitioner, he purchased the properties to an extent of 0.01.01.0 and 0.01.11.0 in Survey Nos.245/29 & 245/11 respectively, from one K.Jeyabalan along with a tiled-roofed house in the year 2005. From the date of purchase, he is residing in the above house without any hindrance.

4. The petitioner would state that since his adjacent land owner, one Durairaj obstructed the common lane situated in the



northern side of the property, he filed a suit in O.S.No.61 of 2007 before the learned District Munsif, Musiry and the said Durairaj also filed another suit in O.S.No.217 of 2009 to remove the encroachment made by the petitioner in Survey No.245/23. The suit filed by the petitioner was dismissed and the appeal preferred by him is pending.

5. In the meanwhile, the petitioner decided to put up construction in his patta land in Survey No.245/29 & 11 and got approval plan from the Village Panchayat to construct a building in the land in Survey No.245/29&11. When the petitioner started constructing his house, his neighbours objected, so the petitioner lodged a complaint against them and criminal cases were also registered against the said Durairaj and some other persons.

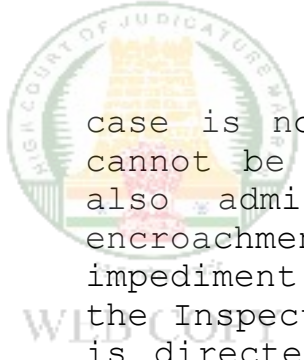
6. The petitioner further stated that he submitted one application to the second respondent with appropriate fees to survey his land. The second respondent visited the property, but failed to measure his patta land stating that a case was pending in High Court in CrI.O.P.(MD).No.18123 of 2016. Therefore, the petitioner approached the first respondent. The first respondent instead of redressing his grievance, passed the impugned order. Hence, the present writ petition has been filed.

7. Mr.M.Karthikeya Venkitachalapathy, learned counsel for the petitioner would submit that there is no dispute that the petitioner has been in possession and he is the owner of the property. Since it was alleged that the petitioner had encroached the property in Survey No.245/23, the encroachment was removed and therefore, the respondents cannot cite the pendency of the case for refusing to measure the property of the petitioner. It is further submitted that the reasons assigned in the impugned order cannot be sustained and it has to be quashed.

8. Per contra, Mr.D.Muruganandham, learned Additional Government Pleader would submit that originally, the petitioner had encroached the land in Survey No.245/23 and the encroachment is now removed by following the due process of law and it is further submitted that whenever the respondents visited the property of the petitioner to carry out the survey, there was serious objection from his neighbour Durairaj and therefore survey could not be completed.

9. Heard both sides and perused the materials available on record.

10. It is not in dispute that the petitioner owns the property in Survey Nos.245/11 and 29 and he has paid necessary fee to the respondents. Even according to the respondents, only due to the objection/obstruction made by the neighbours of the petitioner, properties could not be surveyed. Pendency of criminal



case is nothing to do with survey of the property. Any how, it cannot be cited to reject the request of the petitioner. It is also admitted that the petitioner has removed the alleged encroachment in Survey No.245/13. Hence, there cannot be any impediment to consider the application of the petitioner. Hence, the Inspector of Police, Thottiyam Police Station, Trichy District is directed to give police protection, if any request is made by the respondents.

11. In such view of the matter, the impugned order passed by the first respondent in O.Mu.A.Ka.Ma.4792/2016, dated 09.11.2016, is set aside and this Writ Petition is disposed of with the above direction. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.The Tahsildar,
Thottiyam Taluk,
Trichy.

2.Head Taluk Surveyor,
Thottiyam Taluk,
Trichy District.

3.The Inspector of Police,
Thottiyam Police Station,
Trichy District.

+1 CC to Mr.M.Karthikeya Venkitachalapathy, Advocate, SRNo. 59716.
+1 CC to SPECIAL GOVERNMENT PLEADER, SR No. 59646.

PJL

PSM/SKN/SAR4/28.06.2017/3P/6C

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