

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2018

CORAM
THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.12664 of 2010
and
MP.No.1 of 2010

P.M.Veerappa Gounder

... Petitioner

Vs.

1. The District Collector,
Collectorate office, Erode District,
Erode - 11.
2. The Revenue Tahsildhar,
Taluk Office, Gobichettipalayam - 638 452.
3. The District Revenue Officer,
Collectorate Office, Erode - 11.
4. The Block Development Officer,
Panchayat Union Officer,
Gobichettipalayam - 638 452.
5. The Assistant Director,
Survey land Records Dept,
Collectorate Office, Erode - 11.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records from the file of the 1st respondent made in Ref.No.Na.Ka.2246/09/A9/Ne.A, dated 06.05.2010 and quash the same and direct the respondents to resurvey afresh the lands comprising in New R.S.Nos.252/1, 252/2, 252/3 and Survey No.220 and fix the boundaries in accordance with Old S.F.No.323/A situated in No.23 Polavakkalipalayam Village, Gobichettipalayam Taluk, Erode District and consequently direct the respondents to alter the revenue record accordingly.

For Petitioner	: Mr.S.Kunalan for Mr.R.Balaji
For R1 to R5	: Mr.J.Ramesh, AGP

O R D E R

This writ petition is directed against the order dated 06.05.2010 passed by the first respondent, whereby, the request of the petitioner seeking resurvey of the lands in New R.S.Nos.252/1, 252/2 and 252/3 and Survey No.220 and fixation of boundaries in accordance with Old S.F.No.323/A situated in No.23 Polavakkalipalayam Village, Gobichettipalayam Taluk, Erode District, was rejected and for a consequential direction to alter the revenue record accordingly.

2.It is the case of the petitioner that he is the absolute owner of the land measuring to an extent of 1.82 acres in Old S.F.No.323/A situated at No.23, Polavallalipalayam Village and has been in possession and enjoyment of the same, without any interruption. As per the survey conducted by the Revenue Department, the settlement register reflects that the land in question stands in the name of one Nalla Kavundan, who is the predecessor of the petitioner. While so, certain officials from the revenue department came and measured the extent of the land in question and noted down the physical features of the same. On enquiry, the petitioner came to know that all the lands in Polavakkalipalayam Village had been resurveyed, due to which, various sub-divisions had taken place and the survey numbers had also been reallocated. Pursuant to the same, the survey number of the land in question viz., S.F.No.323/A, had been allotted as R.S.No.252 with three sub divisions viz., R.S.Nos.252/1, 252/2 and 252/3 and the total extent had been shown only as 1.71 acres and not as 1.82 acres and the remaining 11 cents had been classified as cart track belonging to the Government. According to the petitioner, he is having all the required documents to establish that the entire extent of 1.82 acres belongs to him. Hence, he addressed a representation dated 18.02.2009 enclosing all the necessary documents to the first respondent, a copy of which was marked to the second respondent, requesting to resurvey the land in question. Finding no response on the said representation, he made another representation dated 05.10.2009. Since the said representations were not considered by the first respondent, he filed a writ petition in WP.No.4063/2010, which, by order dated 26.02.2010, was disposed of, directing the first respondent to consider the said representation and pass appropriate orders, on merits and in accordance with law, within a period of eight weeks. Consequent to the same, the first respondent passed the order dated 06.05.2010, rejecting the request of the petitioner seeking resurvey of the land in question, on the ground of delay and laches. Hence, this writ petition.

3.The learned counsel for the petitioner submitted that the petitioner was not aware of the shortfall of 11 cents from the extent of his land and inclusion of the same to the Cart Track poramboke in R.S.No.220, during the process of resurvey and

after coming to know of the same, he made application to the authority concerned seeking resurvey of the land, however, the same was rejected on the ground of limitation. According to the learned counsel, the limitation for filing an appeal starts from the date of knowledge and hence, the order impugned in this writ petition is arbitrary, unreasonable and has resulted in miscarriage of justice.

4. On the other hand, the learned Additional Government Pleader appearing for the respondents made his submissions supporting the order impugned herein.

5. Heard the parties and perused the records.

6. It is the specific case of the petitioner that the total extent of his land is 1.82 acres and the same has been in his continuous possession and enjoyment; and he possesses all the records in support of the same, whereas, the revenue records disclose that the total extent belonging to the petitioner is 1.71 acres and the remaining 11 cents was classified as cart track poromboke, as per the resurvey. After coming to know the same, he requested the respondents to conduct a resurvey, which was rejected by the order impugned herein, on the ground of delay.

7. When it is an admitted case that the petitioner was not aware of the resurvey and reallocation of survey numbers in respect of his land at the relevant point of time, he could have made the application seeking resurvey only after knowing the same. In such circumstances, the question of limitation does not arise, particularly, when the petitioner is able to substantiate his claim by producing valid documents.

8. Even otherwise, the rule of limitation is not meant to destroy the right of parties and is meant to see that the parties do not resort to dilatory tactics, but seek their remedy promptly. In this context, it is pertinent to point out the observation of the Supreme Court in *N. Balakrishnan v. M. Krishnamurthy* [(1998) 7 SCC 123], which reads as follows:

"13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation..."

9. In such perspective of the matter, this Court is inclined to set aside the order impugned herein. Accordingly, the impugned order is set aside and the matter is remitted back to the first respondent for fresh consideration. The first respondent shall conduct resurvey in respect of the land in question, if not already done, after issuing due notice to the petitioner as well as any other interested person and proceed further, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

10. This writ petition stands allowed to the extent indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS IX)

//True Copy//

Sub Assistant Registrar

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To

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Collectorate office, Erode District,
Erode - 11.
2. The Revenue Thasildhar,
Taluk Office, Gobichettipalayam - 638 452.
3. The District Revenue Officer,
Collectorate Office, Erode - 11.
4. The Block Development Officer,
Panchayat Union Officer, Gobichettipalayam - 638 452.
5. The Assistant Director, Survey and Records Dept,
Collectorate Office, Erode - 11.

+1cc to Mr.K.Balaji, Advocate, S.R.No.49448
+1cc to the Government Pleader, S.R.No.49371

W.P.No.12664 of 2010

rrs 14/09/2018