

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2018

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.598 of 2016 & C.M.P.No.7968 of 2016

P.Britto

... Appellant

Vs.

- 1.The Secretary,
Revenue Department,
Government of Tamil Nadu,
Secretariat, St. George Fort,
Chennai-600 009.
- 2.The Under Secretary,
Revenue Department,
St. George Fort,
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,
Sankarankovil Taluk,
Tirunelveli District.
- 7.The Deputy Tahsildar (Zonal),
Sankarankovil,
Tirunelveli District.

8.Mr.Dharmaraj

... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 12.04.2016 passed by this Court in Writ Petition No.7715 of 2016.

WP.No. 7715 of 2016 Prayer: Filed under Article 226 of the Constitution of India to issue 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 quash the same and consequently direct the 6th respondent to survey the petitioner property based on the Gift deed No.2252/2015 dated 30.09.2015 in the presence of the petitioner.

For Appellant : Mr.D.Muthukumar

For Respondents : Mrs.A.Srijayanthi,
Special Government Pleader

For R8 : No appearance

JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The claim made by the appellant that a pipeline was taken through his property in Survey No.635 of 20 of Thannuthu Village was negatived by the District Collector, the third respondent herein on the ground that the survey report available on record indicates that the land was surveyed and it was found that the pipeline was not taken through his land. The said order was put in issue before the Writ Court in W.P.No.7715 of 2016. The learned Single Judge dismissed the writ petition primarily on the ground that the matter involves adjudication of facts and the same is not possible in a Writ Petition filed under Article 226 of the Constitution of India. Feeling aggrieved, the appellant is before this Court.

2. The learned counsel appearing for the appellant contended that the survey was not conducted in the presence of the appellant or his father and as such any report submitted by the survey authorities would not bind the land owner. According to the learned counsel, the survey ought to have been conducted in the presence of the land owner, in case, the survey report is to be taken as a material to negative the claim made by the appellant.

3. The learned Special Government Pleader submitted that there is nothing on record to show that notice was given either to the appellant or his father in connection with the inspection conducted by the survey officials for measurement.

4. The predecessor in interest of the appellant earlier filed a writ petition for removal of encroachment. The issue

was taken up for consideration by the District Collector pursuant to the order in W.P.No.30423 of 2015 dated 28 September 2015. The land appears to have been measured by the survey officers. However, notice was not given either to the father of the petitioner, who was the owner at that point of time or the appellant, who got a settlement from his father on 30 September 2015. The District Collector considered the survey report and having found that the survey authorities have certified that the pipeline was not taken through the property of the appellant, rejected his claim for removal of encroachment. It was the said order, which was challenged before the learned Single Judge.

5. The order passed by the District Collector dated 18 January 2016 clearly indicates that the survey conducted by the surveyor was taken as a basic material to reject the claim made by the appellant. There is nothing on record to indicate that notice was given either to the appellant or his father with respect to the inspection. The appellant is therefore justified in his contention that the District Collector was not correct in placing reliance on the report submitted by the survey authorities behind his back. We are therefore, of the view that the learned Single Judge was not correct in dismissing the writ petition on the ground that the matter involves disputed questions of fact.

6. The order dated 18 January 2016 is set aside. The matter is remitted to the District Collector, the third respondent herein for fresh consideration.

7. We direct the third respondent to cause survey of the property in question through the survey authorities. The appellant must be given notice indicating the time and date on which inspection would be conducted by the survey officials. Thereafter, appropriate orders shall be passed by the District Collector on merits and as per law. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.

8. The order passed by the learned Single Judge is set aside. The writ petition in W.P.No.7715 of 2016 is allowed with the above direction.

9. In the upshot, we allow the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

abr/arr

To

1.The Secretary,
Revenue Department,
Government of Tamil Nadu,
Secretariat, St. George Fort,
Chennai-600 009.

2.The Under Secretary,
Revenue Department,
St. George Fort, 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,
Sankarankovil Taluk, Tirunelveli District.

7.The Deputy Tahsildar (Zonal),
Sankarankovil, Tirunelveli District.

+2cc to Mr.D.Muthukumar, Advocate SR.No.22075
+1cc to Government Pleader SR.No.22888

RK(CO)
GN(12/04/2018)

W.A.No.598 of 2016

सत्यमेव जयते

WEB COPY