



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.11.2019

Coram::

The Honourable Dr.Justice G.Jayachandran

W.P.No.20380 of 2018
& W.M.P.Nos.23935 & 23936 of 2018

G.V.Satheesh Kumar,
S/o.G.Venkatesan,
No.66, Galaxy Road,
Iyambakkam, Chennai - 600 095.

... Petitioner

/versus/

1. The District Collector,
Thiruvallur District,
Thiruvallur.

2. The Tahsildar,
O/o. The Tahsildar,
Avadi Taluk, Avadi,
Chennai.

R2 (Cause tile amended vide order dated 29.03.2019, made in
W.M.P.No.10044 of 2019 in W.P.No.20380 of 2018 by CJ & MDJ.)

3. The Sub-Registrar,
O/o.The Sub-Registrar,
Avadi, Chennai.

4. Mr.A.Gandhi,
Sub-Registrar,
O/o.The Sub-Registrar,
Avadi, Chennai.

5. Mr.S.Kalimuthu,
S/o.M.Sudalai Aadum Perumal,
No.2/226, Devaneyar Bhavanar Street,
Monhiamman Nagar, Redhills,
Chennai - 600 052.

6. Mr.Elumalai,
S/o.Ganesh,
Door No.2/311, New No.2,
Periyar Street, Eattivadi Village,
Polur Taluk, Thiruvannamalai District.

7. H.Naveed Hassan,
S/o.J.A.Hafeez,
No.32/17, Halls Garden,
R.O.B, 6th Street, Royapettah,
Chennai - 600 014.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, to call for the records relating to the order of the 3rd respondent in any by proceedings in Na.Ka.No.300/2018, dated 06.06.2018, to quash the same and to consequently direct the 1 and 2 respondents to forthwith remove the encroachments made by the respondents 5 to 7 and others and to consequently direct initiation of appropriate action against 4th respondent for unbecoming of a Government servant.

For Petitioner : Mr.L.Chandrakumar

For R1 & R2 : Mr.J.Purushothaman,
Government Advocate

For R3 : Mr.T.M.Pappiah,
Special Government Pleader

For R5 : Mr.K.P.Chandrasekaran

For R4 & R6, R7: No appearance

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The petitioner herein claiming to be a absolute owner of the land to an extent of 1acre and 39 cents in ***Survey No.514/13** Morai Village, Ambattur Taluk. He is aggrieved by the encroachment by some third parties so he gave a representation to the competent authorities on 27.06.2012, sought for measuring the land and demarking the boundaries. Since his representation dated 27.06.2012 was not considered by the Tahsildar, Ambuttur, a Writ Petition has been filed in W.P.No.4737 of 2013, wherein, this Court has disposed the Writ Petition directing the

Tahsildar to consider the representation and pass orders on merit, after affording opportunities to the petitioners and others. In spite of said direction, the land was not measured and no enquiry was conducted. In said circumstances, another Writ Petition was filed by this Petitioner in W.P.No.34731 of 2013 to consider his representation dated 19.08.2013 for removal of encroachment in his hand and restore possession. After notice to respondents and hearing the rival claims the Court disposed the said Writ Petition on 04.04.2016 with following observations:-

"However, this Court cannot conduct a roving enquiry, with regard to the disputed question of facts and hence this Court cannot give any positive direction to respondents 1 to 3 with regard to removal of encroachment. However, this Court directs the respondents 1 to 3 to consider the representation of the petitioner dated 19.08.2013 and pass orders on merits and in accordance with law, by affording an opportunity of personal hearing to the petitioner as well as to the respondents 4 to 6 and other necessary parties, if any. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any opinion on the merits of the claim of the petitioner and it is for the respondents 1 to 3 to decide the claim of the petitioner purely on merits."

3. Pursuant to this direction, when there was no action on the part of the respondents hence the petitioner has filed Contempt Petition. Pending Contempt Petition, the Sub Registrar has passed order 06.06.2018, which is impugned in this Writ Petition before this Court.

4. The contention of the petitioner is that, when there was a specific direction by this Court, to hear the parties and afford opportunity and pass orders on merit, instead of conducting enquiry, the Sub Registrar has relegated his responsibility by directing the petitioner to approach Civil Court to ascertain his right, title and possession over the property, in view of the fact, several documents has been registered as Housing plots.

5. The contention of the petitioner is that, the order of the Sub-Registrar, dated 06.06.2019 is improper and illegal, passed without applying his mind and exercising power and also not in consonance with the direction of this Court passed in the earlier round of Writ Petition. The request of the petitioner in his representation, dated 19.08.2013 is to cancel the sale deeds registered fraudulently. In the said circumstances, when his request was not considered, he has approached this Court. This Court, has directed the respondents to afford opportunity to the persons and pass orders on merits.

6. Measuring the Land and Surveying are the responsibility of the Revenue Authorities and Survey Department respectively. Whereas, registering the document or cancellation of the same is duty of the Registration Department. The petitioner herein making wild allegation against the Sub-Registrar by name has filed this Writ Petition. Pursuant to the Court direction in the order dated 06.06.2018, the Sub-Registrar has conducted enquiry and after hearing the petitioner and one Rajendra Raja, the rival claimant, he has directed the petitioner to approach the Civil Court. Referring Satyapal Anand Vs. State of Madhya Pradesh reported in 2016 (10) SCC 767 judgment of the Hon'ble Supreme Court, he has stated that the Sub-Registrar has no power to cancel a registered document. In the impugned order, it is also stated that Civil Suits are pending in respect of the subject property. Therefore, from the counter of the 3rd respondent and perusal of the impugned order passed by him, this Court finds that in the given facts and circumstances, in case of rival claim over the property and the title dispute is pending in Civil Court, the Sub-Registrar cannot probe into the matter and cancel a registered document on his own.

7. The prayer of the Writ Petitioner in W.P.No.34741 of 2013 is to remove encroachment in his land and restore possession to him. Whereas, in his representation dated 19.08.2013, the petitioner has requested to cancel the sale deeds in respect of his property registered fraudulently without his consent/knowledge. In the said Writ Petition, this Court has observed as above extracted in paragraph No.2 and passed direction to the respondents 1 to 3, to conduct enquiry.

8. If the petitioner wants his property to be measured and boundaries to be fixed, he has to first satisfy the Tahsildar about his title over the property and apply to the Tahsildar, who is competent person to arrange Revenue Officials and Surveyor to inspect the field and measure the same. Hence, if any application is made by the petitioner, the 2nd respondent is hereby directed to make field visit and give report on the application of the petitioner herein, within a period of three months, from the date of application. The petitioner herein, based on the report, can work out his remedy as per law.

9. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar(CSIV)

***Amended as per order of this court
dated 05/03/2020 and made in
WMP.6466 of 2020 in WMP.20380/2018**

True Copy

Sub-Assistant Registrar

bsm

To,

1. The District Collector, (To be Substituted to the order
Thiruvallur District, (already despatched on 13/01/2020)
Thiruvallur.

2. The Tahsildar, O/o. The Tahsildar, Avadi Taluk, Avadi, Chennai.

3. The Sub-Registrar, O/o. The Sub-Registrar, Avadi, Chennai.

+2 ccs to M/s.L.Chandrakumar Advocate sr97384

+1 cc to M/s.K.P.Chandrasekara Advcoate sr97912

+1 cc to Government pleader sr98027 & 97554

+1 cc to M/s.L.Chandrakumar Advocate sr19697

WP.No.20380 of 2018

rp(co)

aa27/12/2019

aa12/03/2020

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