

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Review Application No.125 of 2019

A.D.Dayalan

Petitioner

vs.

1. V.Gopinath

2. The Special Thasildar,
Natham Settlement,
Arakonam Taluk,
Arakonam,
Vellore District.

3. The Deputy Superintendent of Police,
Anti-Land Grabbing Special Cell,
Vellore District,
Sathuvachari,
Vellore.

Respondents

PRAYER: Petition filed under Order 47 Rule 1 of Cr.P.C., 108 r/w Section 114 Cr.P.C., to review the order dated 03.01.2019 passed in W.P.No.31367 of 2018 and dismiss the writ petition.

For Petitioners : Mr.R.Thirumoorthy

For Respondents : Mr.N.Manokaran for
Mr.P.Krishnan for R1

Mr.M.Mohamed Riyaz,
Additional Public Prosecutor for R2 & R3

ORDER

This petition has been filed seeking to review the order made in W.P.No.31367 of 2018, dated 03.01.2019.

2. It will be relevant to extract Paragraph Nos.2,3 & 4 of the order passed by this Court in the writ petition as follows:

2. The learned counsel for the petitioner submitted that the petitioner and his family are the absolute owner of the property and they wanted to survey the lands. The third respondent and his sons who have no right over the property were trying to create certain documents and therefore a police complaint has been given against them and the same is pending enquiry. In the mean time, the petitioner wanted to survey the lands with the help of the first respondent. This was prevented by the third respondent with the help of his henchmen. Therefore, the present writ petition has been filed seeking for appropriate direction.

3. It is seen from the records that no representation has been made to the concerned police station seeking for police protection at the time of conducting the survey by the Tahsildar. In the absence of any such representation, this Court cannot issue any direction as sought for by the petitioner.

4. This writ petition is disposed of by giving liberty to the petitioner to give fresh representation to the Inspector Police, Arakkonam Town Police Station, seeking for police protection at the time of surveying the land by the first respondent. On receipt of the

representation, the concerned police shall conduct an enquiry and if necessary give police protection at the time when the survey is conducted by the first respondent. The first respondent at the time of conducting the survey shall do so after issuing notice to the petitioner as well as the third respondent. No Costs.

3. The petitioner in the review petition submitted that the 1st respondent took advantage of the police protection granted by this Court and with the help of the police, survey was conducted and the revenue records have also been illegally transferred to the name of the 1st respondent. According to the petitioner in the review petition, he has a right over the property and therefore the survey conducted by the concerned authority and the changes made in the revenue records will not bind the petitioner. The further case of the petitioner is that taking advantage of the change in revenue records, the 1st respondent is now attempting to illegally trespass into the property belonging to the petitioner.

4. Mr.R.Thirumoorthy, the learned counsel for the petitioner, apart from reiterating the case of the petitioner, also submitted that the dispute between the parties can be resolved only before a competent civil court and therefore the police should not interfere in this dispute and 1st respondent should not to be permitted to encroach upon the property based on the survey conducted.

5. Mr.N.Manogaran for Mr.P.Krishnan, the learned counsel appearing on behalf of the 1st respondent submitted that even the petitioner on an earlier

occassion had sought for conducting a survey and realising that the survey will go against him, the petitioner dropped the said plan. The learned counsel further submitted that, in all the documents pertaining to the property, the property belonging to the 1st respondent has been shown as the boundary and there are several documents to establish the fact that the 1st respondent is the owner of the property. The learned counsel further submitted that the petitioner taking advantage of the fact that the 1st respondent is residing at Chennai, had attempted to encroach upon the property and that is the reason why the 1st respondent had sought for survey of the land, in order to fix the boundaries and resolve the dispute. The learned counsel concluded his arguments stating that the survey has already been conducted by the Surveyor and the changes have also been effected in the revenue records.

6. This Court has carefully considered the submissions made on either side and also the materials available on record.

7. Eventhough, the learned counsel appearing on either side wanted this Court to go into various documents relied upon by the parties to establish their right and title over the property, this Court does not want to do that exercise in this review petition, since, the review jurisdiction has a very limited scope and the Court cannot reappreciate or rewrite the order, unless the order which is sought to be reviewed suffers from an error apparent on the face of the order.

8. The admitted fact is that pursuant to the orders passed by this Court, the survey has been conducted. According to the petitioner, even though the notice was given to the petitioner, his objection has not been taken into consideration at the time of conducting the survey.

9. Taking into consideration, the nature of the dispute between the parties, the same would require appreciation of evidence and a mere survey will not decide the rights among the parties. It is only the competent civil court which can go into this dispute and come to a final conclusion regarding the right and title over the property. The police protection granted by this Court is confined only for conducting the survey in the property and the said survey has already been completed after giving notice to the petitioner. If the petitioner is aggrieved by the survey conducted, he has to challenge the same in the manner known to law. Infact either of the parties will have to necessarily approach the competent civil court in order to decide the right and title over the property.

10. This Court does not find any ground to review the order passed in W.P.No.31367 of 2018, since the order has worked itself out and survey has already been conducted. The order passed in the writ petition did not decide the inter se dispute regarding right and title over the property. Therefore, it goes without saying that the order passed in the writ petition will not have any bearing on the

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civil rights of the parties. It is left open to the parties to approach the appropriate forum and agitate their rights in accordance with law. It is also made clear that the respondent police will not interfere into the civil dispute between the parties.

11. This review petition is disposed of accordingly.

27.06.2019

Speaking Order / Non-Speaking Order

Index : Yes/No

Internet : Yes/No

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To

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