

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.12068 of 2014

Dr.K.Karthikeyan

... Petitioner

Vs.

1.The Tahsildar,
Office of the Tahsildar,
Tiruchengode, Namakkal District.

2.The Firkka Surveyor, Molasi,
Department of Survey,
Tahsildar office compound,
Tiruchengode, Namakkal District.

3.The Inspector of Police,
Tiruchengode Rural Police Station,
Tiruchengode, Namakkal District.

4.T.R.Thandavan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st and 2nd respondents to continue and complete the proceedings which was initiated by them to measure the end and fixing the boundaries and accordingly to mutate the revenue records of the petitioner's land in Survey Nos:77/2A, 2B, 4A, 4B and 78/1 at Chittalanthur Village, Tiruchengode Taluk, Namakkal District along with necessary and proper production by the third respondent in accordance with law within the stipulated time limit.

For Petitioner : Mr.C.Kulanthaivel

For Respondents : Mr.B.Anand for RR1-3
Government Advocate
Mr.V.S.Kesavan for R4

O R D E R

According to the writ petitioner the land measuring about 10 acres 88 cents comprising survey No.77/2, 77/4 and 78/1 in Chittalanthur Village, Thiruchengode Taluk originally belongs to the grand father of the petitioner by name Muthuswamy

Gounder. The said property was subsequently subjected to partition between the petitioner's Grand father Muthusamy Gounder and his brother Ramasamy Gounder by a registered partition deed in the year 1959 as per which the petitioner's grand father was allotted the land measuring 7 acres and 50 Cents and property was inherited by his heirs subsequently. The property was further subjected to a partition among the legal heirs in the year 2005 as per which the land measuring 7 acres and 50 cents was allotted to the petitioner. The fourth respondent herein purchased the land measuring 3 acres and 36 cents from the legal heirs of Ramasamy Gounder. While so, during the UDR survey, the aforesaid lands were surveyed and separate patta was issued to the petitioner and the fourth respondent. However, the fourth respondent, aggrieved by the survey of the lands and the extent indicated in the separate patta issued to him has filed a suit in O.S. No. 224 of 2005 before the Additional District Munsif, Tiruchengode for declaration and mandatory injunction, but the suit was dismissed on 25.03.2011, against which, he has not filed any appeal. Thereafter, the petitioner, noticing that there are some mistake crept in the measurements of his land as reflected in the UDR patta, has filed an appeal to the District Revenue Officer, Namakkal in the year 2011 during which the land in question was surveyed, statement of the petitioner and the fourth respondent were recorded and a consent order dated 19.08.2011 was issued by cancelling the sub-divisions effected under the UDR Scheme in respect of the lands in Survey No.77/2A, 2B, 4A and 4B with a direction to the parties to apply afresh for new measurement and survey as per their consent and as recommended by the Assistant Director of Land Survey. However, for the reasons best known, the fourth respondent did not come forward to apply afresh as per the order of the District Revenue Officer, Namakkal. But at the instance of the petitioner, on 22.01.2013, when survey was sought to be conducted, it was unreasonably prevented by the fourth respondent. Even though the petitioner has sought police protection it was refused by the third respondent on the ground that there is no law and order problem warranting police protection to be given. In those circumstances, the petitioner has approached this Court with this writ petition.

2. The learned counsel appearing for the 4th respondent, relying on the counter affidavit, would submit that the petitioner, by influencing the revenue officials obtained the order of cancellation of the revenue records in respect of the lands in question. The fourth respondent also disputed that he has not given any consent before the District Revenue Officer, Namakkal and such consent will not bind him in any manner. Further, it is submitted that properties were already surveyed and sub divided, pattas were also issued, but the same were cancelled and an illegal clubbing order has been obtained

by the petitioner.

3. On the above contentions, this Court heard the learned Government Advocate appearing for the respondents 1 to 3, who would submit that after recording the statement of the petitioner and the fourth respondent, the District Revenue Officer has passed an order cancelling the erroneous entries made in the revenue records and directed the petitioner and the fourth respondent to approach the concerned authority to measure and to survey the lands in question afresh. When steps were taken to survey the lands in question, it was prevented by the fourth respondent on the ground that the order passed by the District Revenue Officer will not bind him. It is due to the non-cooperation of the fourth respondent, the petitioner sought for police protection to survey and measure the lands.

4. Heard the counsel on either side.

5. Admittedly at the instance of the petitioner, the District Revenue Officer, Namakkal conducted an enquiry. The enquiry was focused with respect to the rectification of the errors crept in the revenue records. It is to be mentioned that during the course of enquiry, the 4th respondent was also heard by the District Revenue Officer, Namakkal. In other words, the statement of the petitioner and the 4th petitioner was recorded by the District Revenue Officer, Namakkal. After recording the statements and upon perusal of the records, it was felt that during the UDR survey the extent and boundaries have been erroneously recorded and they got to be rectified. Therefore, the consent of the petitioner as well as the 4th respondent was obtained and they were directed to approach the competent authority to measure and survey the lands afresh and based on the outcome of the survey, the revenue records can be incorporated suitably. It is with these directions, the District Revenue Officer, Namakkal has passed the order. Admittedly, the 4th respondent did not assail the order of the District Revenue Officer, Namakkal. However, it is contended by the 4th respondent that the order passed by the District Revenue Officer, Namakkal, will not bind him. The 4th respondent having subjected himself in the enquiry conducted by the District Revenue Officer, Namakkal, cannot turn around and say that the order passed by the District Revenue Officer, Namakkal will not bind him. Even otherwise, the District Revenue Officer, Namakkal has not passed the final order determining the rights of the petitioner and the 4th respondent in the subject matter of the land. The District Revenue Officer, Namakkal has only directed the petitioner and the 4th respondent to seek for fresh survey and measurement of the land. Therefore, this Court hereby directs the 4th respondent to extend his co-operation for measuring the lands in question,

as directed by the District Revenue Officer, Namakkal. If the 4th respondent fails to extend his co-operation, this Court direct the 3rd respondent to seek appropriate police protection to enable the survey authorities to measure and demarcate the lands. As per the out come of the survey, the respondents 1 and 2 are directed to appropriately make corrections in the revenue records in respect of the property in question. The survey shall be completed within a period of four weeks from the date of receipt of a copy of the order.

6. With the above directions, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

vsi2

To

- 1.The Tahsildar,
Office of the Tahsildar,
Tiruchengode, Namakkal District.
- 2.The Firkka Surveyor, Molasi,
Department of Survey,
Tahsildar office compound,
Tiruchengode, Namakkal District.
- 3.The Inspector of Police,
Tiruchengode Rural Police Station,
Tiruchengode, Namakkal District.

+1cc to Mr.C.Kulanthaivel, Advocate SR.No.20839

+1cc to Mr.VS.Kesavan, Advocate SR.No.20737

+1cc to Government Pleader SR.No.21536

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KJ(CO)
GMY (27/05/2019)