



WEB COPY

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 29.05.2019**

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MRS.JUSTICE R.THARANI**

**W.P.[MD]Nos.12506 and 12507 of 2019
and
W.M.P. (MD)Nos.9318 and 9319 of 2019**

1.Chellammal : Petitioner in W.P.(MD)No.12506 of 2019
2.Pappathi : Petitioner in W.P.(MD)No.12507 of 2019

Vs.

1.The District Collector, Trichy District.
2.The Revenue Divisional Officer, Musiri.
3.The Tahsildar, Musiri Taluk, Trichy District.
4.The Special Officer/Block Development Officer,
Thathaingarpettai, Trichy.
5.The Taluk Surveyor,
Anjalam Village Panchayat,
Musiri Taluk, Trichy.

: Respondents in both the writ petitions

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of fourth respondent in Na.Ka.P2/52/2017, dated 18.05.2019 and quash the same and consequently direct the respondents to measure and demarcate the petitioners land to an extent of 5 acres in S.No.68/2 by rectifying the mistake in classification.

For Petitioner in
both the W.Ps. : Mr.H.Arumugam

For Respondents in
both the W.Ps. : Mr. Aayiram K.Selvakumar
Additional Government Pleader



COMMON ORDER

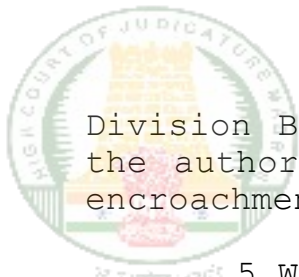
[Order of the Court was made by **G.R.SWAMINATHAN, J.**]

The writ petitioners herein had purchased lands to an extent of 1 ½ acres each in Survey No.68/2, Anjalam Village, Musiri Taluk, Trichy District from one Kandasamy vide sale deeds dated 05.09.1991. A joint patta was also issued vide patta No.1298. While so, a notice was issued by the Tahsildar, Musiri, alleging that the petitioners herein have encroached Survey No.68/1, which has been classified as Salai Poramboke in the revenue records. Therefore, the said Chellammal (petitioner in W.P.(MD)No.12506 of 2019), had filed O.S.No.281 of 2015 on the file of the District Munsif Court, Musiri seeking the relief of declaration and permanent injunction. In the said suit, an application in I.A.No.984 of 2015 was filed seeking temporary injunction. In the said application, an undertaking was given by the learned Government Pleader that no coercive action will be taken as against Chellammal till the disposal of the Second Appeal.

2.One S.Chandrasekaran, who is a fellow villager filed W.P. (MD)No.6311 of 2018 before the Hon'ble Division Bench seeking removal of the encroachment said to have been made by Chellammal and Pappathi in Survey No.68/1 to an extent of 0.06.0 Ares. The said writ petition was disposed off, on 23.03.2018 by directing the authorities to clear the encroachment. Pursuant to the direction given by the Hon'ble Division Bench in the said writ petition, the impugned notice dated 18.05.2019 came to be issued. Challenging the same, these two writ petitions have been filed by Chellammal and Pappathi.

3.The learned counsel appearing for the petitioners submitted that the earlier Division Bench was misled by the petitioner therein, while passing the order dated 23.03.2018 in W.P.(MD)No.6311 of 2018. He would contend that in paragraph No.2 of the said order, it has been observed that no interim orders have been granted in O.S.No.281 of 2015, but on the other hand a specific undertaking has been given by the learned Government Pleader before the trial Court. He would further assert that the said undertaking holds good even as on date. He would further submit that the very same Chandrasekaran had earlier filed W.P.(MD)No.1439 of 2017 seeking the very same relief. The said writ petition was dismissed as withdrawn. Without making any disclosure about the said dismissal, W.P.(MD)No.6311 of 2018 came to be filed.

4.We are of the view that if that be so, the only remedy open to the writ petitioners is to file Review Petition in W.P.(MD) No.6311 of 2018. Filing an independent writ petition questioning the proceedings issued consequent to the direction given by the Division Bench, is clearly not maintainable. That apart, it is seen from the impugned order that pursuant to the direction given by the earlier



Division Bench, the encroachment was actually removed. The case of the authorities as set out in the impugned notice is that a fresh encroachment has been made.

5. When this Court posed a specific question to the petitioners' counsel as to when they became aware of the order made in W.P.(MD)No.6311 of 2018, the petitioners' counsel drew our attention to the averment made in the affidavit that they became aware of the said order only on 06.03.2019. The petitioner should have very well filed the Review Petition before the end of April, 2019 itself. We do not know as to why the petitioner kept quiet. It is further pertinent to mention that the suit schedule is only in respect of Survey No.68/2 and not in respect of Survey No.68/1 and the undertaking given by the Government Pleader in respect of Survey No.68/2, cannot come in the way of removing the encroachment said to have been made in Survey No.68/1. Hence, we are of the opinion that the writ petitions are not maintainable and the same stand dismissed accordingly. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The District Collector, Trichy District.

2.The Revenue Divisional Officer, Musiri.

3.The Tahsildar, Musiri Taluk, Trichy District.

4.The Special Officer/Block Development Officer,
Thathaiangarpettai, Trichy.

5.The Taluk Surveyor,
Anjalam Village Panchayat,
Musiri Taluk, Trichy.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-66453[F] dated 30/05/2019)

+1 CC to SPL GP (SR-66633[F] dated 31/05/2019)

**Order made in
W.P. [MD]Nos.12506 and 12507 of 2019
Dated: 29.05.2019**