



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 15.04.2019
CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) .No.16095 of 2018
and
W.M.P. (MD) .No.14338 of 2018

M.Angayarkanni

... Petitioner

Vs.

1. The District Collector,
Karur District, Karur-639 007.
2. The Revenue Divisional Officer,
karur, karur District-639 001.
3. The Tahsildar,
Manmangalam Taluk, Karur District-639 006.
4. The Inspector of Police,
Velayuthampalayam Police Station,
Velayuthampalayam-639 117, Karur District.
5. Mr.Sivaloganathan,
Survey No.161/2A2,
Karaipalayam, Thirukaduthurai,
Manmangalam Taluk,
Karur District.

... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents 1 to 4 to survey and pegmark the petitioner's house site at Survey No.161/2A4 measuring 35 ft. East-West and 65ft. North-South (2275 sq.ft.) situated in Karaipalayam in Thirukaduthurai Village in Manmangalam Taluk, Karur District and demolish the construction made by the fifth respondent by encroaching the petitioner's house site in Survey No.161/2A4 and give protection to petitioner's house and property forthwith.

For Petitioner	: Mr.G.Thalaimutharasu for M/s.R.M.Makesh Kumaravel
For R1 to R-4	: Mr.Aayiram K.Selvakumar Additional Government Pleader
For R5	: Mr.E.K.Kumaresan

**ORDER**

(Order of the Court was made by **K.KALYANASUNDARAM, J.**)

This Writ Petition has been filed to direct the respondents 1 to 4 to survey and demarcate the petitioner's house site at survey No.161/2A4 measuring 35 ft. East-West and 65ft. North-South (2275 sq.ft.) situated in Karaipalayam in Thirukaduthurai Village in Manmangalam Taluk, Karur District and to demolish the construction made by the fifth respondent by encroaching the petitioner's house site in Survey No.161/2A4 and give protection to the petitioner's house and property forthwith.

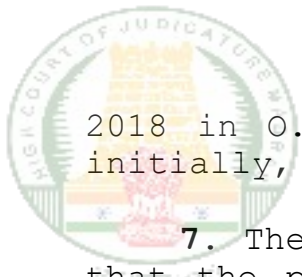
2. Heard Mr.G.Thalaimutharasu, learned counsel, appearing for the petitioner, Mr.Aayiram K.Selvakumar, learned Additional Government Pleader, appearing for the respondents 1 to 4 and Mr.E.K.Kumaresan, learned counsel appearing for the fifth respondent and perused the materials available on record.

3. The case of the petitioner is that she became the absolute owner of the house site to an extent of 2275 Square Feet in Survey No.16/24A at Karaipalayam, Thirukaduthurai Village, Manmangalam Taluk, Karur District, by virtue of a sale deed dated 12.07.2004. A patta No.526 was also issued in her favour.

4. According to the petitioner, she had constructed a house in the above said property keeping some vacant area around her house and she has been enjoying the same. While so, in the year 2017, the fifth respondent frequently trespassed into the property of the petitioner along with his son Prithiviraj and hence, she made an application to survey the property and accordingly, the land was also measured on 10.01.2018.

5. The learned counsel appearing for the petitioner would urge that the fifth respondent made an arrangement to conduct a survey through another Surveyor viz., Mrs.Sudha, but, no proper survey was done by her. Hence, she approached the District Revenue Officer and made a complaint. Since no action was taken, the present Writ Petition has been filed.

6. The fifth respondent has filed a detailed counter affidavit denying the allegations made by the petitioner. It is the case of the fifth respondent that the Writ Petition is not maintainable as the property was already measured by the competent authority in the presence of both the parties. After filing of the Writ Petition, a suit in O.S.No.504 of 2018, was filed by the petitioner, before the learned Additional District Munsif, Karur, for permanent injunction and an application in I.A.No.1260 of 2018 was taken out for appointment of an Advocate Commissioner. To note down the physical features. An Advocate Commissioner was appointed and he also filed his report. As per the report, the petitioner has encroached a portion of the property of the fifth respondent. In I.A.No.1159 of



2018 in O.S.No.504 of 2018, though interim injunction was granted initially, however subsequently, it was dismissed.

7. The learned counsel appearing for the petitioner would state that the petitioner approached the authorities seeking measurement of the property in the presence of the necessary parties. Despite the order of the District Revenue Officer, the property was not measured.

8. Per contra, the learned Additional Government Pleader, appearing for the respondents 1 to 4 and the learned counsel appearing for the fifth respondent would state that if the petitioner has any grievance over the measurement of the property, the remedy available to the petitioner is to approach the Civil Court under Section 14 of the Tamil Nadu Survey Boundaries Act, 1923 and it is also submitted that the petitioner has alleged that the fifth respondent has encroached the property of the petitioner and hence, the Writ Petition is not maintainable by relying upon the judgment of this Court in **W.P. (MD) .No.6989 of 2019-(A.S.Jawahar Vs. The District Collector and others)**.

9. In the case on hand, even according to the petitioner, survey was conducted on 10.01.2018 and a second survey was conducted by another Surveyor viz., Mrs.Sudha. It is also not in dispute that during the pendency of the Writ Petition, the petitioner has instituted the suit in O.S.No.504 of 2018, before the learned Additional District Munsif, Karur, in the month of December 2018 and filed an application for appointment of an Advocate Commissioner. The report of the Advocate Commissioner shows that the petitioner has encroached upon the land of the fifth respondent.

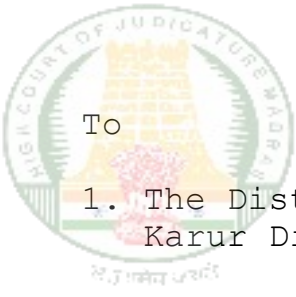
10. The learned counsel appearing for the petitioner would submit that the petitioner has filed an objection to the Commissioner's report stating that no measurement was taken with the help of the Surveyor. Since the property of the petitioner and the fifth respondent has already surveyed twice even before filing of the Writ Petition and the Advocate Commissioner was appointed by the Civil Court to measure the property, we are of the opinion that the present Writ Petition is not maintainable. If the petitioner is having any grievance over the report of the Advocate Commissioner, she can approach the competent Civil Court seeking re-issuance of the warrant to measure the property with the help of the Surveyor.

11. For the reasons stated supra, we find no merit in the Writ Petition. In fine, the Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

sd/
Assistant Registrar(crl. side)

<https://hcservices.ecourts.gov.in/hcservices/> /True Copy/

Sub Assistant Registrar



To

1. The District Collector,
Karur District, Karur-639 007.

2. The Revenue Divisional Officer,
karur, karur District-639 001.

3. The Tahsildar,
Manmangalam Taluk, Karur District-639 006.

4. The Inspector of Police,
Velayuthampalayam Police Station,
Velayuthampalayam-639 117, Karur District.

+1 CC to SPL GP (SR-61277[F] dated 16/04/2019)

+1 CC to Mr.R.M.MAKESH KUMARAVEL, Advocate (SR-61352[F] dated
16/04/2019)

+1 CC to Mr.E.K.KUMARESAN, Advocate (SR-61394[F] dated 16/04/2019)

W.P. (MD) .No.16095 of 2018

15.04.2019

tsg

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