



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.10.2019**

CORAM:

THE HONOURABLE **MR. JUSTICE M. SUNDAR**

W.P. (MD) No. 13955 of 2019

V. Raman

... Petitioner

/Vs./

1. The Tahsildar,
Kalaiyarkovil Taluk,
Sivagangai District.

2. The Surveyor,
Kalaiyarkovil Taluk,
Sivagangai District.

... Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the second respondent to survey and measure the lands of the petitioner comprised in Survey No. 252/21, to the extent of 0.81.00 Hectares, situated in Neduvathaavu Village, Maarathur Group, Kalayarkovil Taluk, Sivagangai District and fix boundaries therein on the basis of the application of the petitioner dated 28.01.2015 within a specified period as may fixed by this Court.

For Petitioner : Mr. G. Aravindhan

for Mr. A. Mohan

For Respondents : Mr. B. Bhagawathi

Government Advocate

ORDER

Mr. G. Aravindhan, learned counsel representing the counsel on record for writ petitioner and Mr. B. Bhagawathi, learned Government Advocate on behalf of both the respondents are before this Court.

2. With the consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3. Subject matter of instant writ petition is 'land comprised in S.No. 252/21 in Neduvathaavu Village, Maarathur Group, Kalayarkovil Taluk, Sivagangai District' (hereinafter referred to as 'said land' for the sake of brevity, clarity and convenience)

4. To be noted, this Court has specifically not mentioned the extent while describing said land (though the prayer refers to the extent as 0.81.00 Hectares) as the prayer itself is to survey, measure and fix boundaries qua said land.

5. Be that as it may, what is of relevance is the counter affidavit filed by the second respondent.



6. It is the case of the second respondent that measurement of said land has been done and the details of measurements have also been given. Details of measurement are as follows:

'I submit that the measurement of the petitioner's land is here under

North - 102.0 meters

Southern- 41 meters

West - 41.0 meters

East - 39.0 meters

has been possessed by the petitioner. There is lots of contrary in between the possession and the FMB sketch.'

7. Learned counsel for writ petitioner on instructions submits that writ petitioner accepts the measurement given in paragraph No.6 of the counter affidavit of second respondent which has been extracted and reproduced supra. It is also accepted that the extent of land within the aforesaid measured and accepted boundaries alone will be available for the writ petitioner, as the basic principle is that boundaries will prevail over extent if there is a discrepancy.

8. Now, all that remains to be done is fixing of boundary stones in accordance with aforementioned measurements, and learned State Counsel submits that it shall be done within a period of eight (8) weeks from the date of receipt of a copy of this order. This puts an end to the issue in this matter.

9. However, one other aspect of the matter has been brought to the attention of this Court in the counter affidavit and that is, according to State, said land is assignment land.

10. Writ petitioner is unable to readily place before this Court the assignment document. It is submitted by learned counsel for writ petitioner that the assignment document has been misplaced. Besides saying that assignment document has been misplaced, it is also being submitted that a wrong entry has been made in the revenue records and that wrong entry according to writ petitioner is that said land has been shown to have been assigned to one Kalimuthan instead of writ petitioner.

11. It is submitted that writ petitioner has obtained 'No Objection Certificate' ('NOC' for brevity) / consent letter from said Kalimuthan wherein said Kalimuthan is said to have averred that the entry qua said land is erroneous and that there is no objection for writ petitioner seeking change of patta in his name qua said land.

12. Therefore, it is made clear that this Court is not expressing any opinion or view on the title of writ petitioner qua



said land. This Court is not expressing any opinion or view about the status of writ petitioner as an assignee qua said land. It has been averred in the counter affidavit that proceedings for resumption of assignment are underway on the ground that terms of assignment have been breached. It is open to the State to initiate proceedings for resumption of assignment, if there is breach of conditions of assignment as alleged. This order will not impede such proceedings.

13. Instant writ petition is disposed of recording aforementioned stated position of parties. No costs.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar (CS)

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To

1.The Tahsildar,
Kalaiyarkovil Taluk,
Sivagangai District.

2.The Surveyor,
Kalaiyarkovil Taluk,
Sivagangai District.

+1 CC to M/s.A.MOHAN, Advocate (SR-93080[F] dated 18/10/2019)

+1 CC to M/s.SPL GP (SR-93129[F] dated 18/10/2019)

W.P. (MD) No.13955 of 2019

17.10.2019

KK/SAR/30.10.2019/3P-5C/