



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.10.2019**

CORAM:

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

W.P.(MD)No.20487 of 2019

and

W.M.P.(MD)No.17127 of 2019

WEB COPY

Senthilkumar

... Petitioner

/Vs./

1.The District Collector,
Theni District, Theni.

2.The Tahsildar,
Tahsildar Office,
Uthamapalayam Taluk,
Theni District.

3.The Head Surveyor,
Tahsildar Office,
Uthamapalayam Taluk,
Theni District.

4.The Sub Inspector of Police,
Rayappanpatti Police Station,
Theni District.

5.Selvam

6.Bojan

... Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining the impugned order in Na.Ka.No.S1/4730/2019 dated 07.2019 on the file of the 2nd respondent and quash the same and consequently direct the respondents 2 and 3 to survey and demarcating the 4 boundaries of the petitioner's land in survey no.244/2A1, 244/4B to an extent of 62 cents situated at Mallikapuram at Annaimalaiyanpatti Village, Uthamapalayam Taluk, Theni District with the help of the 4th respondent within a time stipulated by this Court.

For Petitioner : Mr.S.A.Ajmalkhan

For R-1 to R-4 : Mr.M.Pandiarajan
Additional Government Pleader



ORDER

Mr.S.A.Ajmalkhan, learned counsel on behalf of writ petitioner and Mr.M.Pandiarajan, learned Additional Government Pleader on behalf of the respondents 1 to 4 (Official respondents) are before this Court.

2. From the case file placed before this Court and from the submissions made at the hearing, it comes to light that instant writ petition can be disposed of by an order which is not adverse to the rights of respondents 5 and 6 (private respondents). Therefore, with the consent of learned counsel for writ petitioner and learned State counsel, this Writ Petition is taken up, heard out and is being disposed of.

3. Read this order in conjunction with and in continuation of earlier proceedings / order of this Court dated 24.09.2019, which reads as follows:

'W.P.(MD)No.20487 of 2019:

Mr.S.A.Ajmalkhan, leaned Counsel on record for writ petitioner is before this Court.

2. It is submitted that subject matter of instant writ petition is land comprised in Survey No.244/2A1 and 244/4B in Rayappanpatti Village in Uthamapalayam Taluk in Theni District (hereinafter 'said lands' for brevity). This Court is informed that said lands admeasure 62 cents or thereabouts.

3. Mr.M.Pandiarajan, learned Additional Government Pleader, accepts notice on behalf of respondents 1 to 4 (official respondents). To be noted, respondents 5 and 6 are private respondents.

4. From the submissions made before this Court, it comes to light that writ petitioner has lodged a complaint on 31.05.2019 with the jurisdictional police authorities (fourth respondent) against private respondents 5 and 6 pertaining to said lands.

5. Pursuant to such complaint, the fourth respondent on 27.06.2019 has written to the second respondent requesting for said lands to be measured, surveyed and boundaries fixed or in other words, a request to localise the said lands was made.



6. Be that at it may, it is submitted that prior to this, writ petitioner has filed a Criminal Original Petition (hereinafter 'said Crl.O.P.' for brevity) in Crl.O.P.(MD)No.8344 of 2019 before this Court pursuant to 31.05.2019 complaint and it is submitted that said Crl.O.P., was disposed of on 17.06.2019, but a copy of the order has not been placed before this Court as part of the case file.

7. Be that as it may, on written instructions from the third respondent, learned State Counsel submits that survey and measurement or in other words the exercise of localising said lands could not be done as respondents 5 and 6 have said that a suit in O.S.No.193 of 2019, on the file of Uthamapalayam Subordinate Court, is pending, but, learned Counsel for writ petitioner submits that no suit summons has been served on the writ petitioner.

8. Vide the impugned order, second respondent has said that exercise of localising said lands cannot be carried out, owing to pendency of civil suit.

9. Learned Counsel for writ petitioner undertakes to produce a copy of the aforementioned order dated 17.06.2019 made in Crl.O.P.(MD)No.8344 of 2019 in the next listing.

10. Notice to private respondents 5 and 6 i.e., notice regarding admission returnable by 15.10.2019.

11. In the next listing, Registry to show the name of State Counsel as well as private Counsel if any if respondents 5 and 6 enter appearance through Counsel. Otherwise, the names of respondents 5 and 6 together with their complete addresses as shown in the cause title, has to be shown in the cause list.

12. List on 15.10.2019.'

4. Today, certified copy of order dated 17.06.2019 made by a Hon'ble Single Judge of this Court in Crl.O.P.(MD)No.8344 of 2019 has been placed before this Court and the said order reads as follows:



'This Criminal Original Petition has been filed seeking a direction to the third respondent to give police protection for the petitioner's life and limb.

2.The grievance of the petitioner is that the respondents 4 to 6 are taking steps to illegally grab the petitioner's property and also threatening him with dire consequences. Hence, he made a complaint to the respondents 1 to 3 for taking action against the accused persons and for police protection. But, so far no action has been taken against the accused. Hence, the petitioner has filed the present criminal original petition .

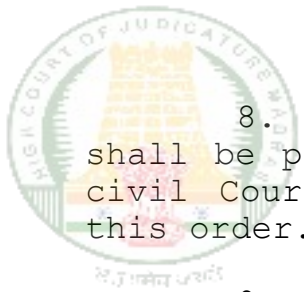
3.The learned Additional Public Prosecutor on instructions would submit that based on the complaint given by the petitioner, enquiry has been conducted and summons were issued to the accused persons as well as the petitioner. But the petitioner did not appear for the enquiry.

4.Considering the fact that based on the complaint given by the petitioner, enquiry has been conducted and summons were issued to the parties and the petitioner has not appeared for the enquiry, it is not open to the petitioner to approach this Court seeking police protection. Hence, the petitioner is not entitled for the relief sought for, and this criminal original petition is dismissed.'

5. Besides the aforesaid order made by a Hon'ble Single Judge of this Court, there is no disputation or disagreement before this Court that a civil suit in 'O.S.No.193 of 2019 on the file of Uthamapalayam Subordinate Court' (hereinafter referred to as 'said suit' for the sake of brevity, clarity and convenience) has since been filed by respondents 5 and 6 as plaintiffs 1 and 2 respectively and that writ petitioner herein is the first defendant in the said suit.

6. There is also no disputation or disagreement that said suit pertains to said lands and that prayers in said suit are for cancellation of sale deed, declaration of title and consequential injunction besides other incidental and ancillary prayers.

7. In the aforesaid backdrop, this Court is left with the considered view that it will be appropriate to leave it to the writ petitioner to contest the said suit and workout his rights and remedies qua said land in the aforesaid civil suit.



8. Though obvious, it is made clear that the civil suit shall be proceeded with and adjudicated upon by the jurisdictional civil Court without being influenced by any observations made in this order.

9. Instant Writ Petition is disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The District Collector,
Theni District, Theni.
- 2.The Tahsildar, Tahsildar Office,
Uthamapalayam Taluk, Theni District.
- 3.The Head Surveyor, Tahsildar Office,
Uthamapalayam Taluk, Theni District.
- 4.The Sub Inspector of Police,
Rayappanpatti Police Station,
Theni District.

+1 CC to M/s.S.A.AJMAL KHAN, Advocate SR-92885.

Order made in
W.P. (MD) No.20487 of 2019

Dated:
16.10.2019

CS (04.11.2019) 5P 6C