



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P(MD)No.24299 of 2019

and

W.M.P(MD)Nos.20911 & 20912 of 2019

WEB COPY

Abdul Ajees

... Petitioner

Vs.

1.The Superintendent of Police,
Theni, Theni District.

2.The Thasildar,
Periyakulam Taluk,
Theni District.

3.The Inspector of Police,
Jeyamangalam Police Station,
Theni District.

4.The Surveyor,
Periyakulam Taluk,
Theni District.

5.Mujibur Rahman

... Respondents

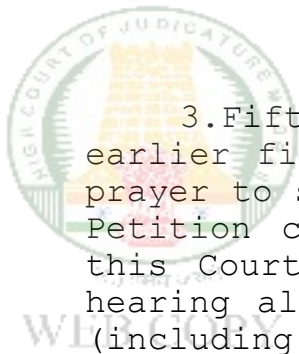
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the fourth respondent to survey the land after issuing proper notice to all the rival parties and after conducting proper enquiry between the parties concerned with regard to the land in S.No.1834/2C situated at Kullapuram Village, Periyakulam Taluk, Theni District.

For Petitioner : Mr.R.Senthil Kumar

ORDER

Mr.R.Senthil Kumar, learned counsel on record for writ petitioner is before this Court in second call and argued the matter on merits after Ms.V.Muthumani, learned counsel after some arguments in the first call in the forenoon took a pass over for getting instructions regarding withdrawal.

2.Nucleus of this entire Writ Petition is a 'piece of land comprised in Survey No.1834/2C in Kullapuram Village, Periyakulam Taluk, Theni District' (hereinafter referred to as 'said land' for brevity).



3.Fifth respondent before this Court (private respondent) had earlier filed a Writ Petition being W.P(MD)No.16744 of 2019 with a prayer to survey said land with police protection. This earlier Writ Petition came to be listed before another Hon'ble Single Judge of this Court and another Hon'ble Single Judge of this Court, after hearing all the parties concerned (including the writ petitioner, who was represented by same counsel) disposed of the earlier Writ Petition on 30.09.2019. What is of utmost significance is, in the earlier Writ Petition filed by fifth respondent in instant Writ Petition, writ petitioner herein was arrayed as fifth respondent and was heard out as mentioned in earlier part of this paragraph.

4.Considering the nature of the matter, this Court deems it appropriate to extract entire order dated 30.09.2019 made by another Hon'ble Single Judge and the same reads as follows:

'This Writ Petition has been filed to direct the respondents 1 to 3 herein to provide adequate police protection to survey the petitioner's land in Survey No.1834/2C situated at Kullapuram Village, Periyakulam Taluk, Theni District, based on the petitioner's representation dated 18.07.2019.

2. The learned counsel for the petitioner would submit that the petitioner purchased a land in Survey No.1834/2C situated at Kullapuram Village, Periyakulam Taluk, Theni District. From the date of purchase he is in peaceful possession and enjoyment of the said property. Infact, he also obtained patta in his name. While being so, to protect his land from the neighbouring land owners he wanted to survey the land. Therefore, he paid a requisition fee to the second respondent to survey his land. The 5th respondent raised serious objection to survey the petitioner's land. He also threatened him and surveyor with dire consequence. Therefore, he lodged a complaint on 18.07.2019 as against the 5th respondent seeking adequate police protection to survey his land.

3. The learned Additional Public Prosecutor appearing for the respondents 1 to 4 would submit that if any surveyor seeks permission to survey the petitioner's land, the third respondent is ready to consider the same in accordance with law.

4. Heard Mr.T.Veerakumar, the learned counsel appearing for the petitioner,

Mr.N.R.Sandharaj, the learned Additional Public



Prosecutor appearing for the respondents 1 to 4 and Mr.R.Senthilkumar, the learned counsel appearing for the fifth respondent.

5. The petitioner purchased a land and he wanted to survey the same. A perusal of records shows that he also paid requisition fee to the second respondent to survey his land comprised in Survey No.1834/2C situated at Kullapuram Village, Periyakulam Taluk, Theni District. It is also seen that the 5th respondent has objected the same and as such he lodged a complaint before the third respondent police and sought for adequate police protection to survey his land.

6. Admittedly, the petitioner has also paid a requisition fee to the second respondent to survey his land. On such request, the second respondent engaged surveyor to survey the petitioner's land. The 4th respondent herein faces any objection while surveying the petitioner's land, he can seek the adequate police protection from the 3rd respondent herein. On such request, the third respondent is directed to consider the same after conducting enquiry on the petitioner's representation dated 18.07.2019, after issuing notice to all the rival parties and provide adequate police protection to the surveyor to survey the petitioner's land.

7. With the above direction, this Writ Petition is disposed of. No costs.'

5.A perusal of the case file placed before this Court, more particularly, the affidavit filed in support of instant Writ Petition as well as submissions made by learned counsel for writ petitioner in the hearing in the admission board, brings to light that instant Writ Petition in its entirety is owing to a notice dated 11.11.2019 issued by second respondent post aforementioned earlier order of another Hon'ble Single Judge. This notice bears Reference FL/RTR/STR No.483 of 2019. Adverting to this notice, learned counsel for writ petitioner submitted that it is in contravention of the earlier order made by another Hon'ble Single Judge more particularly paragraph 6 thereof. This is the sheet anchor of instant Writ Petition and most relevant portion articulated in this regard is contained in paragraph 9 of the affidavit filed in support of instant Writ Petition and the same reads as follows:

'9.I respectfully submit that the facts

<https://hcservices.ecourts.gov.in> so, the fourth respondent has issued



notice dated 11.11.2019 and the same has been received by the petitioner on 14.11.2019 stating that the fourth respondent will measure the land on 16.11.2019. The third and fourth respondent without following the direction given by this Hon'ble Court in order dated 30.09.2019 in W.P (MD)No.16744 of 2019 have issued the said notice.'

(underlining made by this Court to supply emphasis / highlight)

6. Notwithstanding above obtaining position what is intriguing is prayer in instant Writ Petition which reads as follows:

'It is therefore prayed that this Hon'ble Court may be pleased to issue a Writ or any other order or direction in the nature of Writ of Mandamus, directing the fourth respondent to survey the land after issuing proper notice to all the rival parties and after conducting proper enquiry between the parties concerned with regard to the land in S.No.1834/2C situated at Kullapuram Village, Periyakulam Taluk, Theni District and pass such other orders or orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.'

7. A perusal of the prayer in instant Writ Petition makes it clear that writ petitioner is virtually seeking the same prayer as in earlier Writ Petition / earlier order {minus police protection alone} made by another Hon'ble Single Judge predicated on the complaint that directive given by another Hon'ble Single Judge has not been adhered to. In the considered view of this Court, such a Writ Petition is not only misconceived, but it is also an abuse of due process of law.

8. When a Writ Petition has been filed with regard to survey of said land by fifth respondent before this Court and when the same has been disposed by another Hon'ble Single Judge by a detailed order dated 30.09.2019 after hearing the writ petitioner herein, if there is a complaint of violation of any of the directives given by the Hon'ble Single Judge therein, the same cannot be ventilated by way of another Writ Petition with same prayer by saying that the order made by another Hon'ble Single Judge was made in a Writ Petition filed by fifth respondent herein. To be noted, writ petitioner and fifth respondent are adversaries qua said land. Moreover there cannot be multiple Writ Petitions with regard to survey of the same land before different Single Judges of this Court.



9.To be noted, it is also specifically articulated in writ affidavit that fifth respondent is none other than son-in-law of writ petitioner's elder sister. The relevant averment is contained in paragraph 2 of writ affidavit and the same reads as follows:

'The fifth respondent is none other than the son-in-law of my elder sister pathamuthu.'

10.In the light of narrative thus far, this Court is left with considered view that writ petitioner has not made out a case for admission. This Writ Petition is bereft of particulars. In the light of narrative thus far, this Court is of the considered view that this is a fit case to impose costs. Nonetheless, considering the nature of matter, this Court refrains itself from imposing costs.

11.Instant Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Superintendent of Police,
Theni, Theni District.

2.The Thasildar,
Periyakulam Taluk,
Theni District.

3.The Inspector of Police,
Jeyamangalam Police Station,
Theni District.

4.The Surveyor,
Periyakulam Taluk,
Theni District.

+1cc to Special Government Pleader, Sr.No. 99534
PS /sma/29/11/19/5p/6c

W.P (MD) No.24299 of 2019
18.11.2019