



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

W.P. (MD)No.13950 of 2020

R.Vinoth Kumar

... Petitioner

-vs-

1.The Tahsildar,
Muthukulathur Taluk,
Ramanathapuram District,

2.The Inspector of Police,
Muthukulathur Police Station,
Ramanathapuram District.

3.C.Alagesan

4.Anandan

5.Boomadevi

6.Muthupetchi

7.Muthumari

8.Sornavalli

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the first respondent to survey the property of the petitioner under Survey No.308/4B2 measuring 15.5 Hectares i.e. 38.29 cents at Keelamuthukulathur Village, Keelamuthukulatur Group, Muthukulathur Taluk, Ramanathapuram District and further direct the second respondent to render police protection to the petitioner to survey the said Survey No.308/4B2 measuring 15.5 Hectares i.e. 38.29 cents for fencing the said property.

For Petitioner

: Mr.K.R.Laxman

For Respondents

: Mr.M.Muniyasamy

1 and 2

Additional Government Pleader

For Respondents

: Mr.PT.S.Narendravasan

3 to 8

ORDER

This writ petition is filed, seeking issuance of a Writ of Mandamus directing the first respondent to survey the property of the petitioner under Survey No.308/4B2 measuring 15.5 Hectares i.e. 38.29 cents at Keelamuthukulathur Village, Keelamuthukulatur Group, Muthukulathur Taluk, Ramanathapuram District and further direct the second respondent to render police protection to the petitioner to survey the said Survey No.308/4B2 measuring 15.5 Hectares i.e. 38.29 cents for fencing the said property.

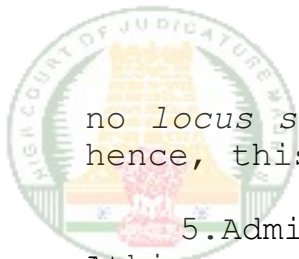
2.Heard the learned Counsel appearing for the petitioner,
Mr.M.Muniyasamy, learned Additional Government Pleader, appearing
<https://hcservices.ecourts.gov.in/hcservices/>



for the respondents 1 and 2 and Mr.PT.S.Narendravasan, learned Counsel appearing for the respondents 3 to 8.

3.It is represented by the learned counsel appearing for the petitioner that the property measuring to an extent of 1 Acre 22 Cents in Survey No.308/4 situated at Keelamuthukulathur Village, Keelamuthukulathur Group, Muthukulathur Taluk, Ramanathapuram District, was originally belonged to one Sakkarai Rowther and after his demise, the said property devolved upon his legal heirs, namely, Mohamed Kani, Abdul Rahman and Mohamed Ismail wherein all the three have entered into a partition by which the subject property along with its larger extent of 43 cents was allotted to one Mohamed Kani and the same was subdivided as Survey No.308/4B. While the said Mohamed Kani was in peaceful possession and enjoyment of the said property, one Solaiyappan and Abdul Rahman interfered with the same which resulted in filing civil suit by the said Mohamed Kani who succeeded upto the Second Appeal stage in S.A.No.32 of 1989. After the demise of the said Mohamed Kani, the property devolved upon his son Rajamohammed from whom the grandfather of the petitioner by name Late Kuppaiandi had purchased an extent of 4019 $\frac{1}{4}$ sq. ft. and 12854 $\frac{1}{4}$ sq. ft. in Survey No.308/4B vide sale deed dated 15.09.2006. Thereafter, after the demise of the petitioner's grandfather, the property was in possession and enjoyment of the petitioner's father by name Ramasamy as his sister executed a release deed in his favour. It is further represented that after the demise of petitioner's father, the petitioner, his mother and two sisters are in possession and enjoyment of the said property. In the said circumstance, the descendents of the Solaiyappan have attempted to disturb the possession and enjoyment of the petitioner by filing vexations suit in O.S.No.71 of 2017 which was dismissed with an observation that already the issue has been settled between the parties in S.A.No.32 of 1989 by the Hon'ble High Court and that there cannot be a second round of litigation. Even thereafter, the respondents 3 to 8 are disturbing the petitioner's possession and enjoyment of the said property. Therefore, the petitioner made a representation on 18.03.2020 before the first respondent to survey the property. Considering the said representation, when the subordinates of the first respondent visited the disputed property, the said Solaiyappan, Alagesan and others in a high-handed manner prevented them from surveying the property. Therefore, the petitioner made a representation to the second respondent on 14.08.2020 seeking police protection for surveying the property. Since there was no response from the respondents 1 and 2, the petitioner has come forward with the present Writ Petition.

4.The learned Counsel appearing for the respondents 3 to 8 by filing a counter would submit that the as against the judgment and decree in O.S.No.71 of 2017, dated 15.03.2019, the respondents 3 to 8 have preferred an appeal in A.S.No.30 of 2020 on the file of the Principal District Court, Ramanad, which is pending. Therefore, neither the petitioner nor the first respondent have



no *locus standi* to measure the property with the help of police and hence, this Writ Petition is not maintainable.

5. Admittedly, the father of the respondents 3 to 5 by name Athiappan and the father of respondent 6 to 8, by name Solaiappan are brothers and the Solaiappan has lost his attempts upto second appeal stage in S.A.No.32 of 1989, the respondents 3 to 8 have preferred an appeal in A.S.No.30 of 2020 on the file of the Principal District Court, Ramanad as against the dismissal of second round of litigation in O.S.No.71 of 2017. This Court is of the view that this is a clear case of suppression of fact on the side of the respondents 3 to 8 and they are trying to drive the petitioner from pillar to post and to deprive the benefit of the judgment and decree which was in favour of the petitioner. The reason for depriving the possession of the petitioner is that appeal suit is pending. The petitioner had the benefit of the judgment and decree in the second appeal in S.A.No.32 of 1989 which cannot be set at naught by any Subordinate Court and the benefit of the same has got to be extended to the petitioner. Therefore, I find that the relief sought for by the petitioner in this Writ Petition has got to be granted.

6. Accordingly, the Writ Petition is disposed of with a direction to the first respondent to survey the property, after hearing the persons who are likely to be affected including the respondents 3 to 8 and in the light of the judgment made in W.P.(MD) No.13465 of 2020, dated 13.10.2020 and in case of issuance of patta, after survey, the directions issued by this Court in W.P(MD). No.7746 of 2020 batch, dated 23.09.2020 should be scrupulously followed. The assistance of the police may be taken for the purpose of surveying the petitioner's property. If there is no proper assistance from the Police Officials, in view of the decision of a Division Bench of this Court in **W.P.No.13648 of 2016, dated 29.04.2019 [V.B.R.Menon v. The State of Tamil Nadu rep. by Chief Secretary and others]**, appropriate assistance can be taken from the Military Forces, as this Court is of the view that this could have been the first and best method instead of last resort and many of the Court orders are only on papers without proper implementation. The said exercise shall be done within a period of 120 days from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SRM



To

1.The Tahsildar,
Muthukulathur Taluk,
Ramanathapuram District,

2.The Inspector of Police,
Muthukulathur Police Station,
Ramanathapuram District.

+1CC to Mr.PT.S.Narendravasan,Advocate,SR.No.24067 dated 04/12/2020

+1CC to Mr.K.R.Laxman,Advocate,SR.No.23991, dated 04/12/2020

+1CC to M/s. SPL GP,SR.No.23882, dated 04/12/2020

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SRK(CO)

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