



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 01.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.15232 of 2020

(Through Video Conferencing)

WEB COPY

Muthukaruppan

... Petitioner

Vs.

1.The Tahsildar,
Aruppukottai Taluk
Aruppukottai
Virudhunagar District.

2.The Taluk Surveyor (Land Survey)
Tahsildar Office,
Aruppukottai
Virudhunagar District.

3.The Sub Inspector of Police,
Paralachi Police Station,
Paralachi
Aruppukottai Taluk
Virudhunagar District.

4.Dheen Mohamed

5.Riyazdheen

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents 1 and 2 to survey the land in S.No.549/90 situated at Poolangal Village, Aruppukottai Taluk, Virudhunagar District and to mark the four boundaries and put survey stone within a time stipulated by this Court.

For Petitioner : Mr.V.Karthikeyan

For Respondents : Mr.M.Muniyasamy for R1 to R3
Addl.Government Pleader
Mr.C.Krishnan for R4 & R5

O R D E R

The writ petition has been filed for a direction to the respondents 1 and 2 to survey the land in S.No.549/90 situated at Poolangal Village, Aruppukottai Taluk, Virudhunagar District and to mark the four boundaries and put survey stone within a time stipulated by this Court.

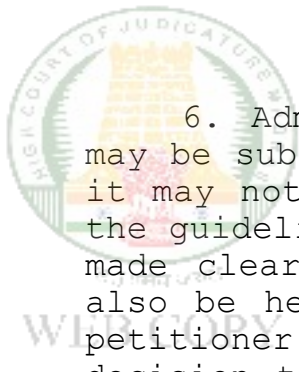


2. Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader for R1 to R3 and the learned counsel for the respondents 4 and 5.

3. The petitioner's case is that the property in S.No.549/90 of Poolangal Village belongs to the petitioner. A suit in O.S.No.145/2002 came to be filed by the power of attorney of the adjacent land owner stating that the suit property is a cart track. After adducing oral and documentary evidence, the suit was dismissed. Subsequently, the petitioner made representation to the official respondents to survey his property. Though survey has been fixed twice, the survey could not be conducted due to the act of the respondents 4 and 5 and hence, the petitioner is before this Court with the aforesaid prayer.

4. It is no doubt true that there was a civil dispute in O.S.No.145/2002, which has gone against the private respondents in this writ petition. They were the plaintiffs. The contesting respondents would submit that they are going to prefer an appeal against the judgment and decree in O.S.No.145/2002, pronounced in November 2019 and for want of judgment and decree, the appeal could not be filed and that in view of the Apex Court judgment, they have got time to prefer an appeal, once the judgment and decree received. As on date, there is no appeal pending.

5. In the present writ petition, the petitioner is seeking for survey of the land. The petitioner was one of the defendants in the suit. Without affecting the parties in the suit, as it is represented by the contesting respondents that they are going to prefer an appeal, the second respondent is directed to conduct survey with the help of police and in the light of the judgment in W.P.(MD) No.13465/2020, modified on 13.10.2020 as well as the guidelines issued in W.P.(MD) No.7746/2020 dated 23.09.2020 and take a decision with regard to issuance of patta, as the case may be. At this juncture, it is represented by the learned Additional Government Pleader that law and order problem would be created by the parties concerned, even if the police is allowed to be there. It is needless to mention that they can use drone technology for the purpose of surveying the land in question. In case, the survey of the land in question is produced before the appellate forum, it is open to the appellate authority to consider the same in accordance with law. This Court has already held that when a civil suit is pending, the question of giving direction to the authorities to survey the land is not possible, as it would amount to interference with the proceedings of the lower forum. But after filing of the writ petition, if any suit is filed, it is not a bar for the authorities to survey the land in question, as it may be a delay in tactics on the part of one of the parties. In the present case on hand, on account of COVID-19 situation, the appeal could not be filed and that order was not received by the parties.



6. Admittedly, the judgment and decree has become final. It may be subject to the result of the appeal, which may be filed, but it may not be a bar for the authorities to survey the land as per the guidelines issued by this Court in the cases cited supra. It is made clear that while taking a decision, necessary parties should also be heard by the authorities and the objections raised by the petitioner need to be considered. It is made clear that the decision to be taken shall be communicated to the petitioner. The petitioner is expected to produce all the documents to substantiate his case.

7. In view of the same, without rendering any finding on the merits of the matter and without affecting the parties rights, the aforesaid directions are issued. The aforesaid exercise shall be completed within a period of 90 days from the date of receipt of a copy of this order.

8. The writ petition is disposed of with the above directions. No costs.

Sd/-

Assistant Registrar (AE)

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/ /2020

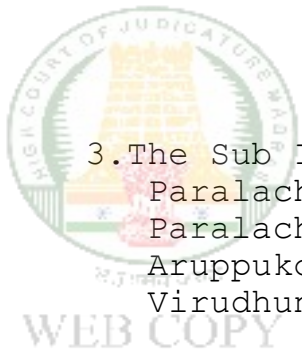
Sub Assistant Registrar(CS)

RR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Tahsildar,
Aruppukottai Taluk
Aruppukottai
Virudhunagar District.
- 2.The Taluk Surveyor (Land Survey)
Tahsildar Office,
Aruppukottai
Virudhunagar District.



3.The Sub Inspector of Police,
Paralachi Police Station,
Paralachi
Aruppukottai Taluk
Virudhunagar District.

+1 CC to Mr.V. PERUMAL, Advocate (SR-23727[F] dated 02/12/2020)

+1 CC to Additional Government Pleader (SR-23636[F] dated
02/12/2020)

+1 CC to Mr.S.KRISHNAN, Advocate (SR-23803[F] dated 03/12/2020)

Order made in
W.P. (MD) No.15232 of 2020
01.12.2020

VB (21.12.2020) 4P 7C