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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2021

CORAM:

THE HON'BLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.20136 of 2021

P.Elumalai

...Petitioner

Vs.

1. The District Collector,
Thiruvallur District.
2. The District Revenue Officer,
Thiruvallur.
3. The Tahsildar,
Thiruvallur Taluk Office,
Thiruvallur.
4. The Head Surveyor,
Taluk Office,
Thiruvallur.
5. E.Palani

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 3 to 4 to carry out the demarcation of the property by disposing the representation dated 07.09.2020, within a time frame.

For Petitioner : Mr.G.Thangavel

For RR1 to 4 : Mr.V.Veluchamy
Government Advocate

ORDER

This writ petition has been filed for issuance of a Writ of Mandamus, directing the respondents 3 to 4 to carry out the demarcation of the property by disposing the petitioner's representation dated 07.09.2020, within the stipulated period prescribed by this Court.



2. According to the petitioner, the petitioner's grandfather namely Munusamy settled his property to the petitioner's mother by way of a registered Settlement Deed in Document No.2159 of 1934 dated 24.09.1934 and thereafter, he died intestate leaving behind the legal heirs namely 1.Elumalai, 2.Vedhachalam, 3.Mari, 4.Sundaram, 5.Santhi and 6.Arumugam have succeeded over the property in Survey No.163/13. Whereas, the petitioner, S/o. of late Palani sub divided the aforesaid property into 7 parts and separate patta was allotted to the legal heirs of the deceased under Survey Nos.163/13-A, 163/13-B, 163/13-C, 163/13-D and Survey No.163/13-A all their family members were maintaining it to approach the road measuring to an extent of 0.10 cents.

3. The further case of the petitioner, one of the share holders namely Mari had given General Power of Attorney to one Rajeshwari W/o.Late. Palani in Document No.36 of 2002 on 21.03.2020 on the file of Sub Registrar Office, Thiruvallur, measuring to an extent of 0.08 Cents out of 9.5 Cents comprised in S.No.163/13-G and in turn the 5th respondent herein had obtained power from various persons in and around the plots belonged to his family and plotted the land in the name and style of "VANMATHI NAGAR" by unlawfully encroaching to approach road to the extent of 0.10 cents which belonged to their entire family members exclusively used for approaching the road while enjoying the property divided among themselves. Subsequently, the third party purchased the property in Survey No.163/13-G measuring to an extent of 0.08 Cents was also plotted and the person who had purchased the said plot from Mr.Palani tried to construct a house in that respective plot by encroaching the 0.10 Cents of the common family property which had already been exclusively earmarked as an approaching road for the family members in this regard which was unlawful and affecting the existing rights of the property as an approached the road in the 0.10 cents which is being enjoyed by all the family members. Therefore, the petitioner lodged a police complaint against third parties and the police officials issued a C.S.R.No.293 of 2017 and the police officials forwarded a letter, dated 14.06.2019 to the 3rd respondent herein to survey the land comprised in Survey Nos.163/13-A & 163/13-G so as to demarcate the property by enlightening the existing fact of approaching road of 0.10 cents, already available for using and enjoyment of all the members of the family. Therefore, he made a representation dated 12.06.2019 before the 3rd respondent to carry out the survey of the land and to grant separate patta for the aforesaid land. On 15.07.2019, the Surveyor namely Mr.Elumalai along with Village Administrative Officer, surveyed the land and completed the entire process, but the said surveyor admitted on the spot that the common land measuring to an extent



of 0.10 Cents which was exclusively made in use as an approaching road is being encroached by the third parties. However, the said Surveyor told that the Patta land of the property will be shown as a road and not as a private land for the reasons best known to him. Moreover, he has got necessary Joint Patta in Survey No.163/13-A. In this regard, the petitioner gave a representations dated 18.06.2020 and 07.09.2020 before the fourth respondent in person and copies of the same sent through RPAD on the same date. Since, the 4th respondent did not take any action, the petitioner gave another representation dated 8.10.2020 before the 3rd respondent in person on the same day and was directed to approach the Head Surveyor namely the 4th respondent to complete the process of demarcation of the property. Whereas, 4th respondent is keeping the matter pending without any valid reasons even after the direction was issued by the third respondent. Till date, no action has been taken by the respondents 3 & 4 to survey and demarcate the aforesaid property. Hence, the petitioner has no other alternative remedy except to approach this Court under Article 226 of the Constitution of India. Hence this petition.

4. The learned counsel appearing for the petitioner submitted that the petitioner will be satisfied if a direction is issued to the respondents 3 and 4 to consider the petitioner's representation dated 07.09.2020 and dispose of the same within a stipulated time that may be framed by this Court.

5. Having regard to the limited scope of the prayer that is now sought for in this writ petition before this Court and taking into account the submissions made on either side, without expressing any opinion on the merits of the petitioner's representation or the case pleaded by the petitioner in the present writ petition, the Writ Petition is disposed of, the petitioner is directed to produce the Revenue Records before the Authorities concerned to survey and demarcate the aforesaid land cited supra and pass appropriate orders, on merits and in accordance with law, after issuing notice to the petitioner as well as necessary parties concerned within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar



gba

To

WEB COPY

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4. The Head Surveyor,
Taluk Office,
Thiruvallur.

+1cc to the Government Pleader Sr.49062
+1cc to Mr.G.Thangavel, Advocate Sr.48071

W.P.No.20136 of 2021

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srg 12/11/2021