



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2021

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.1026 of 2021

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Paripooranam

... Petitioner

-VS-

1.The Tahsildar,
Taluk Office,
Peraiyur Taluk,
Madurai District.

2.The Firka Surveyor,
Ezhumalai Firka,
Peraiyur Taluk,
Madurai District.

3.Sakthi @ Sakthiammal

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, to direct the 1st and 2nd respondents to survey and demarcate the lands comprised in Patta No. 742, in Survey No.144/5A1 and Patta No.743 in Survey No.144/5A2, situated at E.Kottaipatti Village, Peraiyur Taluk, Madurai District, based on the representation dated 24.11.2020 submitted to the respondents, within the time frame that may be fixed by this Court.

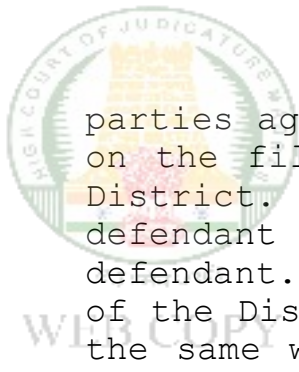
For Petitioner : Mr.R.Murugan

For R1 & R2 : Mr.M.Jeyakumar
Additional Government Pleader

ORDER

The case of the petitioner is that he has purchased the property in S.No.144/5, to an extent of 47 cents, situated at E.Kottaipatti Village, Peraiyur Taluk, Madurai District, vide registered sale deed document No.530 of 2006 dated 26.05.2006. The property was subsequently subdivided into S.Nos.144/5A1 and 144/5A2. According to the petitioner, in respect of both the subdivided properties, revenue records were mutated in his name and patta was also issued in patta Nos.742 & 743.

2.According to the petitioner, from the date of his purchase, he is in possession and enjoyment of the property, without any hindrance. According to him, a civil suit was filed by some third



parties against the petitioner and 18 others in O.S.No.259 of 2007 on the file of the District Munsif Court, Thirumangalam, Madurai District. In the said suit, the petitioner was arrayed as 10th defendant and the 3rd respondent herein was arrayed as 16th defendant. The said suit was subsequently transferred to the file of the District Munsif cum Judicial Magistrate Court, Peraiyur and the same was renumbered as O.S.No.124 of 2013 and pending before the same Court.

3.The grievance of the petitioner in this writ petition is that the 3rd respondent along with her henchmen are trying to encroach a part of his land and in regard to the same, the petitioner approached the 1st respondent, requesting him to survey and demarcate the property comprised in the aforesaid survey numbers, relating to the properties purchased by him, vide registered sale deed dated 26.05.2006. Thereafter, the petitioner submitted a representation on 24.11.2020 to the respondents 1 and 2 and necessary fee has also been paid. In pursuance of the representation submitted by the petitioner, the 1st respondent has directed the 2nd respondent to survey the land, vide his proceedings dated 10.12.2020. Thereafter, notice was ordered on 05.01.2021 by the 2nd respondent to the petitioner as well as the 3rd respondent. However, no survey could be undertaken, in view of the pendency of the civil Court litigation. According to the petitioner, pendency of the civil suit has nothing to do with the survey of the subject land and therefore, he is before this Court.

4.When the matter is taken up for hearing today, learned Additional Government Pleader appearing for the respondents 1 and 2 would submit that in regard to the same subject matter, admittedly, a civil suit is pending as averred by the petitioner himself. In the said circumstances, on instructions, he would submit that the authority could not undertake the survey, in view of the serious dispute as to the ownership of the properties. Therefore, survey could not be carried on. According to the learned Additional Government Pleader, it is up to the petitioner to workout his remedies in the pending suit and pending the civil dispute, the authority cannot undertake any survey and measure the property.

5.This Court is in agreement with the submission made by the learned Additional Government Pleader. When, admittedly, a civil suit is pending, in which, both the petitioner as well as the 3rd respondent are arrayed as one of the defendants, no mandamus could be issued by this Court, compelling the respondents 1 and 2 to measure and survey the land. In fact, in response to the request, if the authority takes any steps to survey the land, he may not be able to complete his job due to the dispute qua parties with rival claim. In such scenario, it is for the petitioner to workout his remedy before the civil Court or obtain any direction in the pending suit. However, it is not open to the petitioner to



approach this Court by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

6. For the aforesaid reasons, this Court finds that the writ petition is not maintainable and accordingly, the same stands dismissed. No costs.

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Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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To

1. The Tahsildar,
Taluk Office,
Peraiyur Taluk,
Madurai District.

2. The Firka Surveyor,
Ezhumalai Firka,
Peraiyur Taluk,
Madurai District.

+1 CC to SPL GP (SR-6520,6434[F] dated 22/02/2021)

W.P. (MD) No.1026 of 2021

19.02.2021

KM (15.03.2021) 3P 4C