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W.P.(MD)No.8252 of 2021
Savariammal v. The Tahsildar

BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED: 21.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD)No.8252 of 2021

and WMP (MD) No.6232 of 2021

(Through Video Conferencing)

Savariammal

... Petitioner

Vs.

1.The Tahsildar,
Thiruverambur Taluk Office,
Thiruverambur
Trichy District

2.The Taluk Surveyor
Office of the Thiruverumbur Taluk Office,
Trichy District

3.The Inspector of Police,
Thiruverumbur Police Station,
Thiruverumbur
Trichy District

4.D.Elamugan

5.John Dhansamy

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondents 1 and 2 to survey and measurement the petitioner land comprised in S.No.171/5N situated at Keelakurichi Village, Thiruverumbur Taluk, Trichy District by considering the petitioner representation dated 02.03.2021 within the time stipulated by this Court.

For Petitioner : Mr.B.Jameelarasu

For Respondents : Mr.B.Bhagavathi for R1 to R3
Government Advocate

ORDER

This writ petition has been filed for the issue of a writ of mandamus directing the first and second respondents to consider the representation made by the petitioner on 02.03.2021, wherein, the petitioner is seeking for conducting a survey in the subject



2. The case of the petitioner is that she is the absolute owner of the property comprised in S.No.171/5N. The further case of the petitioner is that the 5th respondent is the adjacent land owner and he started encroaching upon the property of the petitioner. The petitioner therefore filed a suit in O.S.No.176/2021 before the District Court, Trichy seeking for the relief of permanent injunction.

3. In the meantime, the 5th respondent seems to have entered into a lease with a company and according to the petitioner, the company is now attempting to erect cellphone tower by digging holes and by encroaching into the property of the petitioner.

4. The petitioner, therefore, made a representation before the first and second respondents on 02.03.2021 seeking for the survey of the property. Since the same was not acted upon, the present writ petition has been filed before this Court seeking for appropriate direction.

5. Heard the learned counsel for the petitioner and the learned Government Advocate appearing on behalf of the respondents 1 to 3.

6. In the considered view of this Court, the petitioner cannot be allowed to work out her remedy parallelly before two forums. The petitioner was aggrieved by the fact that the 5th respondent had illegally encroached upon her property and therefore, a suit was filed. The petitioner could have moved an interlocutory application and sought for an interim injunction, if there was a potential threat of encroachment into the property. The same has not been done. The fifth respondent is said to have entered into an agreement with the 4th respondent and the 4th respondent is said to be carrying on with the work of erecting a cellphone tower encroaching into the property of the petitioner.

7. This cannot be stopped by merely directing the first and second respondents to conduct a survey in the property. The petitioner, instead of getting an interim order before the competent civil Court, is trying to short circuit and achieve it by way of directing the respondents to conduct the survey. The petitioner has sufficient safeguards even before the civil Court. The petitioner can seek for an interim injunction and the petitioner can also seek for the survey of the property by an Advocate Commissioner with the help of the official Surveyor. Without working out the remedy in the pending suit, the petitioner cannot be permitted to work out her remedy before this Court.

8. In view of the above, liberty is granted to the petitioner to work out her remedy in the pending suit. Except giving this



liberty, no further orders can be passed in this writ petition.

9. The writ petition is disposed of accordingly. No costs. Consequently connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

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,
Thiruverambur Taluk Office,
Thiruverambur
Trichy District
- 2.The Taluk Surveyor
Office of the Thiruverumbur Taluk Office,
Trichy District
- 3.The Inspector of Police,
Thiruverumbur Police Station,
Thiruverumbur
Trichy District

+1 CC to M/s.SPL GP (SR-17160[F] dated 22/04/2021)

W.P. (MD)No.8252 of 2021
21.04.2021

RK(11.05.2021) 3P 5C