



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2021

CORAM :

WEB COPY

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE S.ANANTHI**

**W.P. (MD) Nos.17396, 17399, 17400, 17403, 17405 and 17407 of 2019
and W.M.P. (MD) Nos.13907, 13908, 13910, 13913 and 13914 of 2019**

R.Ramachandran	.. Petitioner in W.P.(MD) No.17396/2019
K.Nallasamy	.. Petitioner in W.P.(MD) No.17399/2019
R.Subbaraja	.. Petitioner in W.P.(MD) No.17400/2019
K.Jagadish	.. Petitioner in W.P.(MD) No.17403/2019
T.Sankaran	.. Petitioner in W.P.(MD) No.17405/2019
A.Kanagalakshmi	.. Petitioner in W.P.(MD) No.17407/2019

Vs

- 1.The District Collector,
Thoothukudi,
Thoothukudi District.
- 2.The District Head Surveyor,
Collectorate Office,
Thoothukudi,
Thoothukudi District.
- 3.The Revenue Divisional Officer,
Kovilpatti, Thoothukudi District.
- 4.The Tahsildar,
Kovilpatti Taluk,
Kovilpatti, Thoothukudi District.
- 5.The Taluk Surveyor,
Taluk Office,
Kovilpatti,
Thoothukudi District.



6.The Block Development Officer,
Kovilpatti Panchayat Union,
Kovilpatti Taluk,
Kovilpatti,
Thoothukudi District.

7.The Inam Maniyachi Panchayat,
Rep. by its Special Officer,
Inam Maniachi,
Kovilpatti,
Thoothukudi District.

8.Dr.Nirmala

9.Lakshmi Naraynan ... Respondents in all the Writ Petitions

COMMON PRAYER in W.P.(MD) Nos.17396, 17399, 17400, 17403 and 17405 of 2019: Petitions under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 4th respondent in Na.Ka.No.6/3413/2019 dated 13.07.2019 and quash the same and consequently, directing the respondents 4 to 6 herein to resurvey the entire land comprised in Survey No.86/6B1 to 6B9, Inam Maniyachi Village, Kovilpatti Taluk, Thoothukudi District and to fix the boundaries of the pathway set apart by N.Ayyalusamy and land donated by the 8th respondent for the pathway to the extent of 17 feet both comprised in Survey No.86/6B8, Inam Maniyachi Village, Kovilpatti Taluk, Thoothukudi District and to remove the encroachment made by the respondents 8 to 9 to the extent of 2 feet in the common pathway in survey No.86/6B8 within a time frame that may be fixed by this Hon'ble Court.

PRAYER in W.P.(MD) No.17407 of 2019: Petition under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus, directing the respondents 1 to 6 herein to resurvey the entire land comprised in Survey No.86/6B1 to 6B9, Inam Maniyachi Village, Kovilpatti Taluk, Thoothukudi District and to fix the boundaries of the pathway set apart by petitioner's husband N.Ayyalusamy and land donated by the 8th respondent for the pathway to the extent of 17 feet both comprised in Survey No.86/6B8, Inam Maniyachi Village, Kovilpatti Taluk, Thoothukudi District and to remove the encroachment made by the respondents 8 to 9 to the extent of 2 feet in the common pathway in survey No.86/6B8 within a time frame that may be fixed by this Hon'ble Court.



For Petitioner
in all Writ Petitions

: Mr.A.Rahul

For Respondents
in all Writ Petitions

: Mr.A.K.Manickam
Standing Counsel for Government
for R1 to R5 & R7
Mr.A.Thiyagarajan
Standing Counsel for R6
Mr.S.Pandiarajan
For R8 & R9

COMMON ORDER

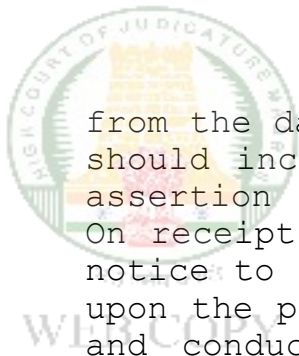
[Common Order of the Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.A.Rahul, learned counsel for the petitioner, Mr.A.K.Manickam, learned Standing Counsel for Government, appearing for respondent Nos.1 to 5 & 7, Mr.A.Thiyagarajan, learned Standing Counsel for respondent No.6 and Mr.S.Pandiyarajan, learned counsel for respondent Nos.8 and 9.

2.The petitioners are aggrieved by the order passed by the Tahsildar, Kovilpatti, dated 13.07.2019, by which the request made by the petitioners for resurvey has been declined. The reasons stated in the impugned order is that the petitioners have not produced documents to substantiate their claim when opportunity was granted. The reply given by the petitioners is that they were never informed about the survey or put on notice that survey is being conducted. Respondent Nos.8 and 9 have encroached upon the pathway and put up stone pillars and chain link fence. Therefore, if the documents in possession of the petitioners are considered and re-survey is conducted, then it will clearly establish the fact that the stand taken by respondent Nos.8 and 9 that there is no encroachment is false.

3.In any event, this controversy cannot be adjudicated in a Writ Petition based on affidavits or photographs and it is for the authorities to take appropriate action. In any event, due to efflux of time, prejudice would be caused if no re-survey is conducted. If there is any encroachment in the public pathway, then the same has to be removed. Merely because at the relevant point of time the petitioners did not produce documents because they were not put on notice may not be a justifiable reason to re-survey, provided the petitioners produce documents and pay the fees for re-survey.

4.In the light of the above, these Writ Petitions are disposed of with a direction to the petitioners to submit a detailed representation to the fourth respondent within a period of two weeks



from the date of receipt of a copy of this order. The representation should include all documents in support of their claim. Mere false assertion and vague statement may not be taken into consideration. On receipt of the representation, the fourth respondent shall issue notice to the petitioners and respondent Nos.8 and 9, after calling upon the petitioners to remit the survey fee, fix a date for survey and conduct survey and if any encroachment is found, action be initiated in accordance with law. If on the other hand, in the opinion of the fourth respondent, there is no encroachment based on the survey report, a speaking order should be passed and the decision be communicated to the petitioners so as to enable them to workout their remedy in accordance with law.

5.These Writ Petitions stand disposed of with the above directions. No costs.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sj

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 District Collector,
Thoothukudi,
Thoothukudi District.
- 2.The District Head Surveyor,
Collectorate Office,
Thoothukudi,
Thoothukudi District.
- 3.The Revenue Divisional Officer,
Kovilpatti,
Thoothukudi District.



4.The Tahsildar,
Kovilpatti Taluk,
Kovilpatti,
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5.The Taluk Surveyor,
Taluk Office,
Kovilpatti,
Thoothukudi District.

6.The Block Development Officer,
Kovilpatti Panchayat Union,
Kovilpatti Taluk,
Kovilpatti,
Thoothukudi District.

7.The Special Officer,
The Inam Maniyachi Panchayat,
Inam Maniachi,
Kovilpatti,
Thoothukudi District.

+1 CC to M/s.GP (SR-23335[F] dated 20/07/2021)

W.P. (MD) Nos.17396, 17399, 17400, 17403, 17405 and 17407 of 2019
16.07.2021

KMK(CO)
TR(02.08.2021) 5P 9C