



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2022

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THE HONOURABLE Mr. JUSTICE M.DHANDAPANI

W.P. No. 26432 of 2013

and

M.P. Nos.1 of 2013 & 1 of 2014

1. G.Mahalingam
2. A.Pakkirisamy

...Petitioners

Vs.

- 1.The District Collector,
Karaikkal.
- 2.The Tahsildar,
Thirunallar Tahsildar Office,
Pettai Road, Thirunallar.
- 3.The Assistant Director of Survey,
Taluk Office, Karaikkal.
- 4.V.Anantharaman

...Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Ceriorarified Mandamus calling for the records of the 2nd respondents in its Notice No.1935/ TLK/ TNR/2013 dated 2.8.2013 quash the same and consequently direct the respondents to demarcate the boundaries of the land measuring an extent of 15 Kuzhis in R.S.No.192/5 in Soorakudi Village belonging to the 2nd petitioner as per the schedule of property mentioned in Document No.475 of 1975 dated 26.7.1975 in accordance with the provisions of the Pondicherry Survey and Boundaries Act 1967 more specifically sections 9(1) and 9(2) therein.

For Petitioner : Mr.Karthik

For Respondents : Mr.J.Kumaran RR1 to 3
Addl. Government Pleader (P)
Mr.M.V.Venkataseshan R4



ORDER

This writ petition is filed challenging the notice issued by the 2nd respondents in Notice No.1935/ TLK/ TNR/2013 dated 2.8.2013 and direct the respondents to demarcate the boundaries of the land belongs to the second petitioner.

2. The petitioners had purchased the land to extent of 11664 sq. ft. from one Muthu @ Vaithianathan by way of three sale deeds dated 06.05.1975 and 26.07.1975. The Fourth Respondent herein filed a suit for declaration of his right and for possession of the property comprised in R.S.No.192/5 measuring an extent of 19 acres and 5 cents in Soorakudi Village, which includes the above mentioned property purchased by the petitioners by the aforementioned sale deeds. The trial Court had passed a decree in favour of the 4th respondent. Aggrieved by that order, an appeal in A.S.No.47 of 1998 before the Additional District Judge, Karaikkal has been preferred, which was ordered against the Fourth Respondent by the Appellate Court. Subsequently, the Second Appeal in S.A. No.13 of 1990 filed against the order of the lower appellate Court, and the same was also dismissed on 17.06.2005 by this Court. Against that said order Civil Appeal in C.A. No. 6969 of 2005 was filed by the Fourth Respondent before the Hon'ble Supreme Court and the same was disposed of .

3. Pursuant to the order of the Hon'ble Supreme Court, the second respondent issued notice on 01.07.2013 to the petitioner intimating that the disputed land is going to be surveyed on 03.07.2013. On 03.07.2013, a Surveyor from the office of the 3rd respondent surveyed the land and demarcated the same on the basis of the three sale deeds referred supra. However, the demarcation was not carried out in accordance with the description of the properties mentioned in those sale deeds. The petitioners made objection to the Surveyor and the Tahsildar on 04.07.2013. Subsequently, the second respondent issued a fresh notice on 11.07.2013 to the petitioners stating that a fresh survey would be conducted on 18.07.2013. The petitioners were present when the survey was conducted by a Surveyor deputed by the 3rd respondent in the presence of the Deputy Tahsildar. The demarcation of the property was again not made in accordance with the description of the property mentioned in the sale deeds. All of a sudden, on 02.08.2013, a notice was issued by the second respondent to the first petitioner calling upon him to vacate and hand over the possession of the house measuring 0.47 ares together with 4.17 acres of land within five days.



4. It is the specific case of the petitioners that the extent of land mentioned in the notice dated 02.08.2013 is covered by the sale deed dated 26.07.1975 vide document No.475 of 1975. The 3rd respondent has not conducted any enquiry after surveying the property and has not given any opportunity to the petitioners to participate in any enquiry and the third respondent has not complied with the procedure and has not communicated to the petitioners with regard to the disputed land. Without giving any opportunity to the petitioners, the second respondent has issued the impugned notice on 02.08.2013 directing the petitioners to hand over the vacant possession of the dwelling unit as well as a part of the land in the possession. Without having no other alternative remedy, the present writ petition has been filed before this Court seeking to quash the impugned order.

5. The learned counsel for the petitioners submitted that this Court may issue a direction to the respondents to measure the property in the presence of the petitioners as well as the fourth respondent and to demarcate the boundaries of the land measuring an extent of 15 Kuzhis in R.S.No.192/5 in Soorakudi Village belonging to the second petitioner as per the schedule of property mentioned vide document No.475 of 1975 dated 26.07.1975 in accordance with the provisions of the Pondicherry Survey and Boundaries Act, 1967 and also implement the order of the Hon'ble Supreme Court in C.A.No.6969 of 2005 within the specified time as fixed by this Court.

6. Heard, the learned counsel for the petitioner, as well as the learned Additional Government Pleader (P) appearing for the respondents and perused the materials available on record.

7. The Hon'ble Supreme Court, vide its order dated 22.03.2013, passed the following order:

'In our view, the appellant shall be entitled to recover the possession of the remaining land to the extent of 8833.8 sq.ft. In such a fact situation, we request the learned Surveyor of the Government to give effect to the sale deeds executed in favour of the respondents by Muthu @ Vaithianathan in 1975 and examining the demarcations mentioned therein and he would permit the respondents only to retain the part purchased by them. The remaining part of the land shall be handed over to the appellant. This exercise shall be done within a period of three months from the date of receipt of production of certified copy of this order before the Surveyor of the Government. Needless to say that in case any construction has been raised by the respondents in the portion which they had not purchased shall not be a ground to allot the said part of the



land to the respondents. Such a construction is totally to be ignored and not to be given effect to.''

After lapse of nine years, the afore said order was not complied with by the respondents. Considering the facts and circumstances of the case, this Court directs the First to Third Respondents to implement the order dated 22.03.2013 made in C.A. No.6969 of 2005 passed by the Hon'ble Supreme Court within a period of twelve weeks from the date of receipt of a copy of this order.

8. With the above direction, this writ petition is disposed of. No order as to costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The District Collector,
Karaikkal.
- 2.The Tahsildar,
Thirunallar Tahsildar Office,
Pettai Road, Thirunallar.
- 3.The Assistant Director of Survey,
Taluk Office, Karaikkal.

+lcc to Mr.Karthik, Advocate SR. No.13675
+lcc to Mr.M.V.Venkataseshan, Advocate SR. No.14374
+lcc to Government Pleader SR. No.13729

WP.No.26432 of 2013

SSN (CO)
PR (04/04/2022)