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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2022

CORAM:

THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

C.R.P.(PD).No. 3553 of 2016
and C.M.P.No.18062 of 2016

N.S.Mohan

... Petitioner

Vs

1.V.Govindasamy
2.The Special Officer,
Tamil Nadu Secretariat Staff Co-operative
Housing Society Ltd., (MDS. HSG 179),
Secretariat, Tamil Nadu, Chennai.

3.The President,
Okkium-Thuraipakkam Village Panchayat,
Rajeev Gandhi Street,
Okkium-Thuraipakkam, Chennai.

... Respondents

(R3 gave up as per memo dated 15.02.2022 and vide order
dated 01.03.2022 made in C.R.P.No.3553 of 2016)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair order and decretal order dated 19.02.2016 as passed in I.A.No.29 of 2014 in O.S.No.909 of 2010 on the file of the learned Principal District Munsif, at Alandur and allow the above Civil Revision Petition.

For Petitioner : Mr.G.B.Sabari Das

For Respondent : Mr.V.Subramanian for R1
for M/s. Dass & Viswa Associates

: Mr.V.Nicholas for R2

: R3 given up

**ORDER**

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The present Revision Petition has been filed challenging the Order passed by the Principal District Munsif, Alandur in I.A.No.29 of 2014 in O.S.No.909 of 2010, wherein, the learned Judge had dismissed the application filed by the petitioner/ 1st defendant seeking to scrap the report of the Advocate Commissioner.

2.Heard Mr.G.B.Sabari Das, learned counsel for the petitioner, Mr.V.Subramanian, learned counsel for M/s. Dass & Viswa Associates, appearing on behalf of 1st respondent and Mr.V.Nicholas, learned counsel appearing on behalf of 2nd respondent and perused the materials available on record.

3.The learned counsel for the petitioner submitted that 1st respondent had filed a suit in O.S.No.9090 of 2010 against him and respondents 2 and 3 in this Civil Revision Petition. The prayer in the suit is to direct the petitioner/ 1st defendant to quit and deliver the vacant portion after removing all the encroachments in the plaintiff/ 1st respondent's property and to pass consequential injunction, restraining the petitioner/ 1st defendant from in any manner interfering with the 1st respondent/ plaintiff's possession of the suit property. An application had been filed by the 1st respondent in



I.A.No.1836 of 2010 seeking to appoint an Advocate Commissioner, to note down the physical features of the property with measurements, with the help of the Assistant of the Taluk Surveyor. An Advocate Commissioner was appointed and he without any proper notice to the petitioner or his counsel had submitted a report dated 11.06.2013 alleging that he had conducted an inspection dated 16.03.2013 with the help of the Surveyor.

4.The petitioner further contended that he had filed objection to the report of the Advocate Commissioner on 24.06.2013. Even in that he had stated that the Commissioner without informing the petitioner or his counsel had conducted the inspection. It was also his case that the Advocate Commissioner had not furnished the copy of the surveyors sketch and report. He had also taken out an application to scrap the Advocate Commissioner's report in I.A.No.29 of 2014. In the said I.A., the petitioner had raised various grounds attacking the Advocate Commissioner's report.

5.The learned counsel for the petitioner vehemently argued that the learned Judge without appreciating various contentions raised by him, rejected his application holding that the petitioner can always file his objections to the Commissioner's report and he can cross-examine the Advocate Commissioner in that regard. It was his further case that the Court



below had failed to see that he had been served with an incomplete report as he was not served with the copy of the report and sketch of the Tahsildar. It is also his case that the Advocate Commissioner had not issued any notice upon him for the inspection carried on by the Advocate Commissioner. Hence, sought interference of this Court to set aside the order passed by the Court below.

6.Countering his arguments, the learned counsel for the respondent submitted that inspite of repeated notices, the petitioner had not appeared and hence, the inspection carried on by the Advocate Commissioner. He drew may attention to the report of the Advocate Commissioner, to substantiate his claim that the petitioner had wantonly avoided the inspection to be conducted by Advocate Commissioner.

7.It is his further case that the Surveyor had also submitted a report along with his sketch. It is not the case of the petitioner that the Surveyor had also acted indifferently. The learned counsel for the respondent would further submit that the Advocate Commissioner had carried out his duty diligently and had submitted his report and it is always open to him to cross-examine the Advocate Commissioner if he assails the same.



8.I have considered the rival submissions made by the learned counsels on either side and perused the materials available on record.

9.On perusal of the Advocate Commissioner's report it would show that the petitioner herein has always been trying to evade the inspection. As per the report of the Advocate Commissioner, a notice of the inspection was issued as early as 20.12.2012 and on the request of the petitioner's counsel, the same was postponed to 02.03.2013. Again a similar request was made. Hence, on the date fixed ie.16.03.2013 as per the intimation dated 02.03.2013, the Commissioner had visited the property at 10.00 a.m. Only at 2.00 p.m. When the Surveyor came, the inspection was carried out after the properties of the plaintiff and the defendant were identified. The Advocate Commissioner had also filed his report along with the sketch. He had also annexed the report of the Surveyor and the sketch prepared by the Surveyor.

10.The case of the petitioner is that no notice have been served upon him. The said allegation is wholly unfounded. It is not his specific case that he was not served with the notice dated 02.03.2013. Even in his petition filed before the Court below, he had stated that the Commissioner has fixed



many dates and on all the dates the petitioner was available along with his counsel.

11.It is his further case, without identification of the property, the Commissioner had submitted the report. The Advocate Commissioner is an officer of the Court and he is liable to be cross-examined if a party to the proceedings finds that he had acted against the interest of a party by submitting a false report.

12.In this case the petitioner has not waited till such time and has filed the present application. If the petitioner is able to substantiate his allegation during the cross-examination of the Advocate Commissioner it would be incumbent upon the Court below to scrap the report of the Advocate Commissioner. Hence, I am not inclined to interfere with the order passed by the Court below in I.A.No.29 of 2014 in O.S.No.909 of 2010 on the file of the learned Principal District Munsif, Alandur.

13. Accordingly, this Civil Revision Petition fails and is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.



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To

1.The Special Officer,
Tamil Nadu Secretariat Staff Co-operative
Housing Society Ltd., (MDS. HSG 179),
Secretariat, Tamil Nadu, Chennai.

2.Principal District Munsif, Alandur.

K.KUMARESH BABU, J.

gba

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