



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.27006 of 2014

and

M.P.No.1 of 2014

1. G.Arumugam

2. G.Muthu Kumaran

...Petitioners

Vs.

1. The District Collector,
Cuddalore District,

2. The Tahsildar,
Virudhachalam Taluk,
Virudhachalam.

3. Pechammal

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned notice dated 22.09.2014 issued by the 2nd respondent, quash the same and consequently forbear the respondents 1 and 2 from proceeding any enquiry in respect of the petitioners' land comprised in Survey No.39/5 and 39/9, situated at Seppalanatham Village, Virudhachalam Taluk, Cuddalore District.

For Petitioners : Mr.C.V.Shyam Sunder

For Respondents : Mr.A.Anandan, GA, for R1 & R2
: Mr.C.T.Mohan, for R3

O R D E R

The petitioner has filed this writ petition seeking issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned notice dated 22.09.2014 issued by the 2nd respondent, quash the same and to consequently forbear the respondents 1 and 2 from proceeding with any enquiry in respect of the petitioners' land.



2. The case of the petitioners is that, the properties comprised in R.S.Nos.39 & 40, measuring an extent of 1.78 acre out of 12.04 acres and 1.80 acre out of 11.80 acres respectively was originally owned by one Ramachandran. Subsequently, the said Ramachandran mortgaged the above said properties along with the buildings and super structures and machinery to Tamil Nadu Industrial Investment Corporation Limited (in short 'TIIC'), vide registered Mortgage Deed dated 28.03.1983. As the said Ramachandran failed to repay the loan amount, the TIIC brought the said property to public auction sale on 31.12.1996 and the same was purchased by the 1st petitioner and one Manivannan from TIIC and the sale deed for the same was registered as Document No.380 / 1998. Thereafter, the petitioners have started a partnership business in the said property in the name and style of "Sri Kolanjiappar Modern Rice Mill" and have also constructed a house in the southern eastern corner of the above said property. Whiles, the 2nd respondent attempted to create encumbrance at the instigation of the 3rd respondent / wife of said Ramachandran, by introducing the name of the 3rd respondent in the revenue records of the said property. Aggrieved by the same, the petitioners filed a suit in O.S.No.43 of 1999 on the file of the District Munsif, Neyveli and other judicial proceedings were also taken up as against the 1st and 2nd respondents, and in the suit permanent injunction was sought for and ultimately, the said suit was decreed in favour of the petitioners, vide order dated 16.04.2002.

3. It is the further case of the petitioners that the 3rd respondent filed a suit in O.S.No.67 of 2010 before the Sub Court, Neyveli for declaration of title and recovery of possession of the above said property from the petitioners and during the pendency of the said suit, the 3rd respondent approached the 2nd respondent to survey the disputed land and issue patta in her favour and pursuant to the same, the 2nd respondent issued ownership certificate in favour of the 3rd respondent, by creating a new sub division as S.No.39/9 in the souther portion of the disputed property. Aggrieved by the same, the petitioners preferred a suit in O.S.No.63 of 2013 on the file of the District Munsif, Neyveli. Whiles, the Surveyor, Kammapuram East issued a summon dated 09.12.2013 to the petitioner to appear on 14.12.2013 for surveying the disputed land. Thereafter, the petitioners made a detailed representation dated 06.01.2014 before the 2nd respondent, for cancellation of patta and the certificate dated 22.11.2013 issued in favour of the 3rd respondent, however, till date, no orders have been passed on the same. Therefore, the petitioners filed a writ petition in W.P.No.1368 of 2014, challenging the notice dated 09.12.2013. During the pendency of the said petition, the 2nd respondent passed an order dated 20.01.2014, directing the 3rd respondent to obtain suitable orders from the Civil Court in the



suit in O.S.No.67 of 2010 filed by the 3rd respondent, which was pending on the file of Sub Court, Neyveli and observing the same, this Court, vide order dated 10.03.2014 dismissed the said Writ petition with a direction to the parties to pursue the matter before the Civil Court, where the suit is pending. While such being the case, the 2nd respondent again issued a notice dated 22.09.2014, stating that on the petition given by the 3rd respondent, the survey proceedings was fixed on 26.09.2014. Immediately, the petitioners made a representation before the 1st and 2nd respondents and thereby, the survey on 26.09.2014 was deferred. Challenging the said notice, the present writ petition is filed.

4. Learned counsel for the petitioners submitted that, similar notice dated 09.12.2013 issued by the Surveyor, Kammapuram East was challenged before this Court in W.P.No.1368 of 2014 and this Court, vide order dated 10.03.2014, directed the parties to pursue the matter before the Civil Court, where the suit is pending. While such order is in existence, the 2nd respondent again issued a notice dated 22.09.2014, directing the petitioner to appear for surveying of the disputed lands, based on the representation made by the 3rd respondent for surveying the land and issuance of patta, is not sustainable. He further submitted that, in the mean time, the suit in O.S.No.67 of 2010 filed by the 3rd respondent on the file of the Sub Court, Neyveli was decreed in favour of the petitioners, vide decree dated 06.11.2017. Further, as against the said order, the 3rd respondent filed an appeal in A.S.No.54 of 2018 before the III Additional District Court, Virudhachalam and the same was also dismissed, vide order dated 27.08.2021, confirming the order passed in favour of the petitioners in the suit in O.S.No.67 of 2010. Hence, he prayed for appropriate orders.

5. Learned counsel for the 3rd respondent fairly submitted that, as against the order dated 27.08.2021 in A.S.No.54 of 2018, the 3rd respondent has taken effective steps to file second appeal before this Court. Hence, he prays this Court for liberty to the 3rd respondent to file appropriate application in the event the 3rd respondent succeeds in the second appeal.

6. Heard the arguments advanced by the learned counsel on either side and perused the materials available on record.

7. It is not disputed that similar notice dated 09.12.2013 issued by the Surveyor, Kammapuram East, directing the petitioners to appear for surveying the disputed land, was challenged before this Court and this Court, vide order dated 10.03.2014, directed the parties to pursue the matter before the Civil Court, where the suit is pending. In the mean time, the said suit in O.S.No.67 of 2010 had been decreed in favour of



the petitioners, vide decree dated 06.11.2017 and the consequent appeal in A.S.No.54 of 2018 filed by the 3rd respondent challenging the said order was also dismissed, vide order dated 27.08.2021, confirming the order passed by the lower Court in favour of the petitioners. While such being the case, the issuance of the present impugned notice dated 22.09.2014 by the 2nd respondent, which is similar in nature to the earlier notice, directing the petitioners to appear for enquiry and for surveying the said disputed land is not sustainable. In view of the above, the present impugned notice cannot be sustained. The official respondents cannot go beyond the earlier order of this Court, without there being any new material to take such an action. In fact, the material is more in favour of the petitioner as the suit, which was pending then, has since been decreed in favour of the petitioner. The said notice is therefore liable to be set aside.

8. Accordingly, for the reasons aforesaid, the impugned notice dated 22.09.2014 issued by the 2nd respondent is set aside and the Writ petition is allowed, with a liberty to the 3rd respondent to file appropriate application, in the event of succeeding in the Second appeal. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

skt

To

1. The District Collector,
Cuddalore District,
2. The Tahsildar,
Virudhachalam Taluk,
Virudhachalam.

+1cc to Mr.C.V.Shyam Sunder , Advocate, S.R.No.24746
+1cc to Mr.C.T.Mohan, Advocate, S.R.No.24392
+1cc to the Government Pleader, S.R.No.24552

W.P.No.27006 of 2014 and
M.P.No.1 of 2014

SV(CO)
CT 02/06/2022