



W.P.No.26508 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2022

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THE HON'BLE MR. JUSTICE M.DHANDAPANI

**W.P.No.26508 of 2022
and W.M.P.No.25575 of 2022**

M.Balasubramaniam

... Petitioner

Vs.

1. The District Collector,
Coimbatore District,
Coimbatore.

2. The Tahsildar,
Coimbatore North Taluk,
Coimbatore.

3. C.S.K. Prabhu

... Respondents

Prayer : Writ Petition has filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records pertaining to R.C.No.4568/2022/A1 dated 29.08.2022 on the file of the 2nd respondent and quash the same.



W.P.No.26508 of 2022

WEB COPY

For Petitioner :: Mr.A.E. Ravichandran

For Respondents 1 & 2 :: Mr.U.Bharanidharan
Additional Government Pleader

For Respondent No.3 :: Mr.N.Nithianandam

ORDER

This Writ Petition is filed seeking issuance of a Writ of Certiorari to call for the records pertaining to R.C.No.4568/2022/A1, dated 29.08.2022, on the file of the second respondent and quash the same.

2. The case of the petitioner is that, initially, the grand father of the petitioner, one Arunachala Goundar owned the properties comprised in Survey No.600/2, measuring 3.48 acres and Survey No.601/1, measuring 1.82 acres, in total 5.30 acres in Kalapatti Village, Coimbatore North Taluk and he filed a suit in O.S.No.3067 of 1981 on the file of DMC, Coimbatore against one Subbanna Gounder and his sons, including one S.Subramaniam, father of the third respondent for declaration of title and injunction and the same was decreed in his favour on 28.02.1983. Thereafter, the said Arunachala Goundar leased out the subject properties to the petitioner by



W.P.No.26508 of 2022

way of lease deed dated 23.03.1982 and the petitioner's possession as cultivating tenant was recorded in the Record of Tenancy by order dated 01.10.1992. Out of the said 5.30 acres, the said Arunachala Goundar executed a sale agreement dated 10.05.1982, of an extent of 2.00 acres in favour of the petitioner. After the demise of the petitioner's grand father on 29.07.1998, the petitioner filed a suit in O.S.No.22 of 1985 on the file of Subordinate Court, Coimbatore, for specific performance and the same was decreed in his favour on 17.10.2001 and the sale deed in respect of 2.00 acres of the subject properties was also executed by the II Additional Subordinate Court, Coimbatore, dated 27.12.2011, registered as Document No.10843 of 2011 on the file of SRO, Gandhipuram, thereby, the petitioner was found in possession and enjoyment of the said properties. While so, the petitioner came to know that the father of the third respondent mortgaged the property of an extent of 69 ½ cents in Survey No.600/2 (Part) with M/s.Chemtech Engineering and the said property was brought for auction and the third respondent had purchased the same. Meanwhile, a portion of the property was acquired for Airport expansion and the petitioner was in possession and enjoyment of the remaining extent of 95.19 cents of land in Survey No.600/2A1 (Part) by fencing the same. While so, the third



W.P.No.26508 of 2022

respondent filed a petition before the second respondent to remove the fencing put-up by the petitioner. Based upon the said petition, the second respondent issued summons and called upon the petitioner for enquiry, whereby, the petitioner attended the enquiry and filed a detailed counter. However, he was determined to remove the fencing and hand over the possession to the third respondent. Aggrieved by the same, the petitioner made a representation dated 24.09.2022 before the first respondent. However, till date no order has been passed upon the petitioner's representation. Hence, the petitioner has filed this Writ Petition.

3. Learned counsel for the petitioner submitted that the petitioner is the owner of the property in Survey No.600/2A of an extent of 98.14 cents. However, the private respondent being the adjacent land owner, made a complaint against the petitioner before the second respondent/Tahsildar to remove the fence put up by the petitioner, pursuant to which, the second respondent issued the impugned summons to the petitioner. In the present case, the disputed property of an extent of 98.14 cents was owned by the petitioner. However, without authority, the second respondent issued summons to the petitioner for removal of the fence, which is not sustainable.



W.P.No.26508 of 2022

Accordingly, he prays this Court for passing appropriate orders.

4. In contrary, the learned counsel for the third respondent submitted that the third respondent is the owner of the property of an extent of 65 cents. However, a portion of the property was encroached by the petitioner, thereby, the third respondent made an application for measuring the property in terms of Tamil Nadu Survey and Boundaries Act, 1923. However, inadvertently, the second respondent issued summons to the petitioner as if the the third respondent made an application for removal of the fence put up by the petitioner, which is incorrect.

5. This Court also heard the submissions of the learned Additional Government Pleader appearing for the respondents 1 and 2 on the above aspects.

6. Considering the facts and circumstances of the case and the submissions, made on either side and since the third respondent himself admitted that he had made application for measuring the property in terms of Tamil Nadu Survey and Boundaries Act, 1923, inadvertently, the second



W.P.No.26508 of 2022

respondent/Tahsildar issued summons to the petitioner for removal of the fence in question. Therefore, the impugned order passed by the Tahsildar is liable to be set aside and accordingly, the order impugned is set aside. However, if any application is filed by the third respondent for measuring the property in terms of Tamil Nadu Survey and Boundaries Act, 1923, the said application to be processed after providing an opportunity of hearing to the petitioner as well as the third respondent herein and pass appropriate orders within a period of twelve weeks from the date of receipt of a copy of this order.

7. Accordingly, this Writ Petition is allowed in the above terms. No Costs. Consequently, connected Miscellaneous Petition is closed.

08.11.2022

Speaking order: Yes/No
Index: Yes/No
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WEB COPY



W.P.No.26508 of 2022

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W.P.No.26508 of 2022

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