

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.2817 of 2021

M.Elayasamy

... Petitioner

VS.

1.The District Collector,
Madurai,
Madurai District.

2. The Tahsildhar,
Peraiyur Taluk,
Madurai District.

3. The Taluk Surveyor,
Periyakattalai,
Peraiyur Taluk,
Madurai District.

4. Mookammal

5. Kasimayan

6. Puyal Raja

7. Ramalingam

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to consider the petitioner's objection dated 11.11.2020, relating to survey notice dated 02.02.2021, issued by the third respondent by invoking Section 10 of the Tamil Nadu Survey and Boundaries Act, 1923 and pass appropriate order within a time frame fixed by this Court.

For Petitioner	: Mr.J.Sethil Kumaraiah
For R1 to R3	: Mr.A.Kannan
	Additional Government Pleader
For R4 to R7	: Mr.C.Jawahar Ravindran

ORDER

This Writ Petition is filed for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to consider the petitioner's objection dated 11.11.2020, relating to survey notice dated 02.02.2021 issued by the third respondent, by invoking Section 10 of the Tamil Nadu Survey and Boundaries Act, 1923 and pass appropriate orders.

2. The case of the petitioner is that on 29.06.1996, he purchased a land in S.No.104/6A and 104/3D situated at Periyakattalai, Peraiyur Taluk, Madurai District bearing an extent of 0.04.0 ares and 0.03.3 ares respectively from one Ochathevar and Chinnaasamy Thevar through unregistered mortgage deed. The petitioner is in possession and enjoyment of the above said properties without any hindrance. But, the Patta stands in the name of Ochathevar and Chinnaasamy Thevar. Further, the petitioner's right over the said properties were not obstructed for any reasons till the life time of said Ochathevar and Chinnaasamy Thevar. After their demise, by knowing the aforesaid facts, the legal heirs of said Ochathevar and Chinnaasamy Thevar unnecessarily tried to cause encumber over the property. Therefore, the petitioner has filed a suit in O.S.No.66 of 2020 before the District Munsif Court, Peraiyur and the same is still pending. The petitioner came to know that the private respondents had taken steps to survey the petitioner's above said properties. Hence, he sent a detailed representation to the official respondents not to survey the properties, on 11.11.2020 and the same was received by the respondents on 13.11.2020. The third respondent had

issued a survey notice, dated 02.02.2021, indicating that the petitioner's property in S.No.104/6A would be surveyed on 11.02.2021, at about 11.00 a.m. But, they have not taken any action on the petitioner's representation. Hence, the petitioner has filed the present writ petition seeking direction to the respondents to consider the petitioner's objection dated 11.11.2020, relating to survey notice dated 02.02.2021, issued by the the third respondent.

3. The learned counsel appearing for the private respondents would submit that they are the legal heirs of Ochathevar and the petitioner's statement that he is in possession of the property and he has a legal right over the said property by way of unregistered mortgage deed and all these aspects can be decided only by the competent civil Court and the suit is pending before the District Munsif Court, Peraiyur and the petitioner may be directed to appear before the civil Court and to establish his right in the said suit and not trying to ask for a Mandamus, directing the respondents to consider the petitioner's objection for surveying the property and only after deciding the title of the property,

the parties can measure the property. He would further submit that the property stands in the name of Ochathevar and the Patta also stands in his name and he is the original owner of the property and just measurement of the property will not in any way obstruction to the pending suit.

4. Considering the above said submissions, this Court directs the petitioner to appear before the civil Court and to establish his right in the suit in O.S.No.66 of 2020 and till the title is decided, the authorities are directed not to proceed further.

5. With the above direction, this Writ Petition is disposed of. No costs.

07.09.2022

Index:Yes/No
Internet:Yes/No

akv

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