



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.11.2022

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THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

W.P. (MD) No.26377 of 2022
and
W.M.P.(MD)No.20561 of 2022

K.Renganathan

.. Petitioner

Vs.

1.The Tahsildar,
Uthamapalayam Taluk,
Theni District.

3.The Zonal Deputy Tahsildar,
Uthamapalayam Taluk, Theni District.

4.The Village Administrative Officer,
Uthamapalayam Taluk, Theni District.

5.The Surveyor,
Uthamapalayam Taluk,
Theni District.

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondents not to survey the land and stay all the proceeding towards the suit property till the disposal of the civil suit in O.S.No.213 of 2016 which is pending in the subordinate Court, Uthamapalayam.

For Petitioner : Mr.A.Ganesan
For R1 to R4 : Mr.D.Gandhiraj
Special Government Pleader



ORDER

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This Writ Petition has been filed for issuance of Writ of Mandamus, directing the respondents not to survey the land and to stay all the proceedings towards the suit property, till the disposal of the civil suit in O.S.No.213 of 2016, which is pending before the Sub Court, Uthamapalayam.

2.Heard Mr.A.Ganesan, learned counsel for the petitioner and Mr.D.Gandhiraj, learned Special Government Pleader, who takes notice for the respondents 1 to 4. Considering the nature of order proposed to be passed in this writ petition, notice to the fifth respondent is dispensed with. By consent of both the parties, this writ petition is taken up for final disposal at the admission stage itself.

3.The grievance of the petitioner is that the directions issued by this Court to survey the petition mentioned property of the petitioner has not been followed.

4. The learned counsel for the petitioner submitted that alleging that the petitioner along with others occupied the properties of the village, namely Kodangipatti, O.S.No.213 of 2016 before the Sub Court, Uthampalayam came to be filed by the plaintiff in the suit against the petitioner and some other



residents of the village/defendants in the suit. The said suit was decreed ex-parte. Challenging the same, the petitioner along with other defendants filed an interlocutory application to set aside the ex-parte decree and the same is pending before the concerned Court for consideration. While that being so, W.P.(MD)No.16322 of 2022 came to be filed before this Court by the plaintiff in the suit and the same came to be disposed of with the following directions:-

“(i)The survey authority will issue notice to the writ petitioner as well as the adjacent land owners and also to the interested persons, if any.

(ii) Enquiry shall be held. During enquiry, objections raised by the adjacent land owners /interested persons shall be considered.

(iii)If according to the jurisdictional authority the objections are without any basis, the same shall be overruled and the objections shall be informed accordingly. But the survey will be conducted only after concerned court for injunction. If before the proposed date of survey the objector is unable to obtain any injunction order, the survey can very well go on.

(iv) If the jurisdiction authority finds objections to be having substance, then, he shall call upon the applicant to move the jurisdictional civil Court for agitating the rights.

(v) If required the survey authority empowered to seek aid of the jurisdictional police and the jurisdictional police are mandate to grant police protection.”



5. Now, the contention of the learned counsel for the petitioner is that the fourth respondent came to survey the land on 03.11.2022 in violation of the above said conditions imposed by this Court. Hence, the petitioner has filed the present writ petition.

6. The learned Special Government Pleader appearing for the respondents submitted that the petitioner has not produced any documents to show that he is having right over the subject property. The authorities have issued notice to the petitioner to appear for an enquiry and produce all the relevant documents for consideration. But till date, the petitioner has not produced any such documents.

7. It is seen from the records that the suit was filed for declaration and recovery of possession against the petitioner and others by the plaintiff in the suit. The suit was decreed *ex-parte*, since the petitioner and other defendants have not appeared before the civil Court. Then the petitioner along with other defendants have filed an interlocutory application to set aside the *ex-parte* decree and the same is pending before the civil Court for consideration. It is alleged by the petitioner that the respondents are acting in violation of the order passed by this Court, but the petitioner has not chosen to prove his right by producing valid documents in his favour.



8. The petitioner in the affidavit filed in support of the writ petition has stated that the petitioner is having valid documents to prove his right over the subject property. If it is so, it is for the petitioner to produce the same before the authorities concerned by way of filing objections for surveying the said land or before the competent civil Court in the pending interlocutory application by way of filing written statement to stall the survey progress. The petitioner bypassing the said remedies had straight away approached this Court under Article 226 of the Constitution of India.

9. For the foregoing reasons, the petitioner is directed to approach the competent civil Court by way of filing written statement or the authorities competent by way of filing objections. If any such objection is filed by the petitioner, the same may be considered by the respondents herein and appropriate orders shall be passed on merits and in accordance with law, after affording a fair and reasonable opportunity of hearing to the petitioner, as well as the rival claimants, if any, within a reasonable period.

10. With the aforesaid direction, this Writ Petition is disposed of. Consequently, connected miscellaneous petition is closed.

23.11.2022

Index : Yes/No
Internet : Yes/No



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W.P.(MD)No.26377 of 2022



V.BHAVANI SUBBAROYAN, J.

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To

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Uthamapalayam Taluk,
Theni District.
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Uthamapalayam Taluk, Theni District.
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Theni District.

Order made in
W.P.(MD) No.26377 of 2022

23.11.2022