



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10151 of 2023

1.P.K.Jayaprakash

2.J.Kandha Praveen

... Petitioners

Vs.

1.The Tahsildar,
Modakurichi Taluk,
Erode-Muthur Road,
Erode District – 638 104.

2.Mr.V.K.Muthusamy

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to order dated 13.09.2022 in O.Mu. Petition No.309, 380, 530 / 2022 /D1 issued by the 1st respondent and quash the same and further direct the 1st respondent to measure the land in S.No.235/2B on the southern side situated in Punjailakkapuram Village, Modakurichi Taluk.

For Petitioners

: Mr.N.Sivabalan

For R1

: Mr.D.Ravichander
Special Government Pleader



For R2

: Mr.V.P.Sengottuvel
Senior Advocate
For Ms.P.T.Rama Devi

ORDER

The writ on hand has been instituted questioning the validity of the order passed by the 1st respondent dated 13.09.2022, refused to survey the land as per the request of the petitioners on account of dispute between the parties.

2. The petitioners state that they are the absolute owners of the land described in the present writ petition. In view of ambiguity in boundaries, the petitioners submitted an application under the Tamil Nadu Survey and Boundaries Act, 1923 to conduct survey of their land. However, the 2nd respondent raised an objection to conduct survey of the land and therefore, the Government Surveyors have declined to accept the application and accordingly, passed an impugned order stating that in the presence of an objection, they will not be in a position to conduct survey.



WEB COPY

3. The very purpose and object of the Tamil Nadu Survey and Boundaries Act, 1923 is to ensure that the Government revenue records are maintained properly. It is not perpetuated to resolve the private dispute between the parties. The Act being enacted during pre-independent era. However, in the present day context, the said provision cannot be mis-utilised for the purpose of resolving the property dispute between the parties.

4. In the event of no dispute, the Surveyors would be in a position to consider the application of any person to conduct survey. If at all there is any objection from any other person, then the parties are to be relegated to approach the Civil Court of Law for the purpose of conducting survey or fixing the boundary or to declare title or otherwise. In the event of forcible conduct of survey either at the instance of the High Court in a writ proceeding or with the assistance of the Police, there is a possibility of infringement of the Property Right of either of the person, which will result in an unconstitutionality. Thus, an objection raised by the parties is to be considered by the Competent Authorities and accordingly, the parties must be advised to approach the Civil Court of Law. In the present case, the 2nd respondent raised an objection to conduct survey.



WEB COPY

5. The learned counsel for the petitioners states that mere conducting a survey would not cause any prejudice.

6. However, the learned Senior Counsel appearing on behalf of the 2nd respondent raised an objection by stating that the survey if allowed to be conducted by the Government Surveyor, it would cause prejudice to the interest of the 2nd respondent. Therefore, the objection was rightly considered by the 1st respondent.

7. In view of the dispute between the parties, this Court is of the considered opinion that the Government Authorities may not be in a position to resolve the issue merely conducting a survey and mere conduct of survey would not confer any title or otherwise to any one of the parties. Even if survey is conducted, the Civil Rights cannot be declared or ascertained. Thus, the petitioners are at liberty to approach the Competent Civil Court of Law for the purpose of establishing their right in the manner contemplated.



W.P.No.10151 of

8. With these observations, this Writ Petition stands dismissed. No costs.

WEB COPY

21.07.2023
(2/2)

Jeni
Index : Yes
Neutral Citation : Yes
Speaking order

To

The Tahsildar,
Modakurichi Taluk,
Erode-Muthur Road,
Erode District – 638 104.



WEB COPY



W.P.No.10151 of

S.M.SUBRAMANIAM, J.

Jeni

W.P.No.10151 of 2023

21.07.2023
(2/2)