



W.P.No.17164 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 10.04.2023**

**CORAM :**

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

**W.P.No.17164 of 2022**

K.Krishnan

...

Petitioner

-Vs-

1. The District Collector  
Collectorate Compound  
Kanchipuram District - 631 501.
2. The Thasildhar  
Kundrathur Taluk Office  
Kundrathur Taluk  
Kanchipuram District- 631 501.
3. The Block Development Officer  
Kundrathur Union, Sarala Nagar  
Kancheepuram SH- 110  
Kodambakkam, Padappai Village  
Sriperumpudur Road  
Kanchipuram District - 631 501.
4. The President  
Vaipur Village, Mathur Post  
Kundrathur Taluk  
Kanchipuram District - 631 501.

...

Respondents

Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents 2 to 4 herein to remove the sewerage



W.P.No.17164 of 2022

channel from petitioner's house bearing Door No.1/56, Perumalkoil Street, Vaipur Village Kundrathur Taluk, Kanchipuram District situated in Survey No.272 10 and consequently direct the respondents herein to pay a sum of Rs.5,00,000 /- as compensation.

|                 |                                                                                                                                              |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| For Petitioner  | Mr.S.Prabhu                                                                                                                                  |
| For Respondents | Mrs.S.Mythreye Chandru<br>Special Government Pleader<br>for R1, R2<br><br>Mr.Veda Bagat Singh<br>Special Government Pleader<br>for R3 and R4 |

### **ORDER**

This writ petition was filed for the issue of a writ of mandamus directing the respondents to remove the sewage channel that has been put up in the property belonging to the petitioner illegally and for payment of compensation.

2.The case of the petitioner is that he had purchased the subject property situated at Survey No.272/10 through a registered sale deed dated 06.07.2006, registered as Document No.11438/2006. The title to the property is under challenge in a suit filed by one Elumalai in O.S.No.263 of 2016, which is now pending on the file of the District Munsif Court, Sriperumbudur. This fact may not be very relevant for the purpose of deciding this writ petition.



W.P.No.17164 of 2022

3.The further case of the petitioner is that after his purchase of the subject property, he had put up a house and had maintained a garden and had also erected compound wall to safeguard his property. That apart, there is also a wire fencing beyond the compound wall.

4.The grievance of the petitioner is that the 4th respondent viz., the President of Vaipur Village Panchayat, started the process of digging a channel abutting the house belonging to the petitioner during the month of February 2022. The petitioner apprehended that attempts are being made to demolish the compound wall and to take over a portion of the property in order to put up the sewage channel. Hence, the petitioner questioned the persons, who were doing the work on behalf of the 4<sup>th</sup> respondent.

5.On 17.02.2022, it is alleged that the persons belonging to the 4<sup>th</sup> respondent Panchayat started demolishing a portion of the property and erected sewage channel. Thereby, the front yard of the house of the petitioner, a rest room and the garden also got demolished/destroyed. The petitioner issued a legal notice and there was no response for the same. The petitioner also sent representations and the same also did not evoke any response. Aggrieved by the same, the present writ petition has been filed before this Court.

6.The 2<sup>nd</sup> respondent has filed a counter affidavit. The stand taken by the 2<sup>nd</sup> respondent in the counter affidavit is extracted hereunder:

*4. It is humbly submitted that Thiru. Krishnan S/o. Kanniappa Naickar, filed this Writ petition with a prayer to issue a Writ of Mandamus*



W.P.No.17164 of 2022

WEB COPY

or any other direction in the nature of Writ of Mandamus directing the respondents to remove the sewage Channel from my house namely Door No.1/56, Perumal Koil street, Vaipur Village, Kundrathur Taluk, Kancheepuram District situated in Survey No.272/10 and consequently direct the respondents here in to pay sum of 5,00,000/- as the compensation and pass such further or other orders as this Honorable Court may deem fit and proper in the circumstances of this case.

5.It is humbly submitted that the S.No.272/10, Vaipur village, Kundrathu Taluk, Kancheepuram District is classified as "Gali Natham" in village accounts.

6.It is also humbly submitted that the petitioner has constructed an RCC roofed house in S.No.272/10 which is classified as "Gramanatham Gali" and S.No.270/30, which is classified as "Gramanatham Theru" combinedly.

7. It is also humbly submitted that the patta No.23, in which the petitioner states that the patta stands in the name of the petitioner is in correct and the same comprises in the name of another person.

8. It is also humbly submitted that the field in dispute was surveyed on 6.1.2023 in presence of the Petitioner, Deputy Block Development Officer, Panchayat Vice President by the Firka Surveyor with Zonal



W.P.No.17164 of 2022

Deputy Tahsildhar, Village Administrative Officer, Vaippur Village and made clear to the petitioner that the house is situated in "Gramanatham Gali" and "Gramanatham Theru".

7. During the pendency of this writ petition, this Court passed the following order on 09.02.2023.

*It is the contention of the writ petitioner that the respondent has laid a sewerage channel encroaching upon the petitioner's land. Whereas it is stand of the respondent that the sewerage channel has been laid in the Government Natham Poromboke land and not the petitioner's land. The petitioner claims that he has purchased the property measuring an extent of 2092 sq. ft. vide sale deed dated 06.07.2006.*

*2. Such view of the matter, in order to find out the truth, this Court appoints Mr.S.N.Subramani [Registration No.734/1997] as Advocate Commissioner in this case to survey the land with the help of the Head Surveyor of Taluk Office. The petitioner shall produce a copy of the sale deed of the subject property to the Tahsildar, Kundrathur Taluk, Kanchipuram District, within a period of one week from the date of receipt of a copy of this order. The Advocate Commissioner shall fix the date on which the survey shall be made and give appropriate intimation to the Tahsildar, Kundrathur Taluk, Kanchipuram District, who shall keep the Head Surveyor ready on that day for the purpose of survey in terms of sale deed of the petitioner as referred above. The Advocate Commissioner shall be paid a remuneration of Rs.30,000/- (Rupees Thirty Thousand only), to be borne by the petitioner.*



W.P.No.17164 of 2022

3. *The Advocate Commissioner shall file his respective report on or before 02.03.2023. Necessary warrant shall be issued to the Advocate Commissioner by the Registry.*

8. Pursuant to the above order, the Advocate Commissioner visited the property and with the help of the surveyor, measured the property in line with the sale deed that was executed in favour of the petitioner and a report was filed before this Court on 02.03.2023. The relevant portions in the report filed by the Advocate Commissioner, are extracted hereunder:

*6. It is submitted that, the Sub-Inspector of Survey with the help of other officials in the presence of both parties measured the petitioner in all sides found that after demolition of the portion of the petitioner's property, now the petitioner possessed about 2045 sq.ft (190 sq.meter) of land. But as per the deed, the measurement of the property is 2092 sq.ft (195 sq.meter) There difference of 47 Sq.feet. From the sale deed I came to know that originally petitioner has purchased the property from Balaji & Nageswara Rao vide Registered Sale Deed Doc.No.11438/2006 registered on the file of SRO Sriperumbudur. On enquiry from both sides, I came to know that during the petitioner has constructed a house about 600 sq.ft and also put up telephone tower in the vacant land of his property. In front of his house he put up, front yard, wire fencing compound wall and left side corner he put up a bathroom measuring about 4X 6. It is submitted that while digging for*



W.P.No.17164 of 2022

sewerage channel a portion of the petitioner's house front yard, wire fencing and bath room were demolished. The damaged portion of the petitioner's marked in Green colour of my rough sketch and enclosed along with my report. Local panchayat had put up concrete sewerage channel in front of the petitioner's house after demolished a portion of the petitioner's house property. In front of the petitioner's house there is a street end. (i.e.Perumal koil street). The petitioner's house is a final house in the said street. Adjacent a small vacant land and thereafter a lake situated. Originally the Perumal koil street width is about 36 feet from starting point. But in front of the petitioner's house, in the end point of Perumal koil street's width is about 69 feet. In the middle of the said perumal koil street one Perumal temple is available.

7.It is submitted as per the survey I found that there is a difference about 47 sq.ft. land between the sale deed measurement (2092 sq.ft) and now available petitioner's land after demolition (2045 sq.ft.). Originally the Perumal koil street is starts with about 36 feet breadth but in front of the petitioner's house there is 69 feet width of road is available.

9.The matter came up for hearing on 02.03.2023 and this Court passed the following order:



W.P.No.17164 of 2022

*The report filed by the Advocate Commissioner indicate that an extent of 47 sq.ft. of land has been encroached while laying sewerage channel.*

*2. This Court is of the view that as the respondents have taken away the land of the petitioner without any acquisition proceedings, the respondents are bound to make the loss good.*

*3. In this regard, the respondents are directed to get instructions.*

10.The matter once again came up for hearing on 28.03.2023 and this Court passed the following order:

*The second respondent has already filed counter.*

*2. The third respondent/The Block Development Officer and the fourth respondent/President of Padappai Village, counter is already filed.*

*3. Since the official respondents claims that the sewerage in the Gramanatham land, this Court has appointed an Advocate Commissioner by an order dated 09.02.2023 and the Advocate Commissioner has also filed a report along with photographs whereby, he has given a finding that out of 2092sq.ft, the third and the fourth respondent without any authority of law has encroached upon 47 sq.ft in the petitioner's land.*

*4. The learned counsel for the third and fourth respondents seeks time to file objection if any, by 10.04.2023.*

*5. The report filed by the Advocate Commissioner Mr.S.N.Subramani [Registration No.734/1997] is taken on record. 6. Post on 10.04.2023.*



W.P.No.17164 of 2022

11. When the matter was taken up for hearing today, the 4<sup>th</sup> respondent has filed objections to the report of the Advocate Commissioner and the relevant portions are extracted hereunder:

*4. With regard to Para 6 of the Report, the Advocate Commissioner failed to take into account the fact that the Natham A register still does not reflect the name of the parties who sold the property nor the name of the Petitioner and it still reflects to be "Grama Natham- vacant land" and the Sale deed itself mentions that the sale deed is with regard to Grama Natham Vacant Land and the patta does not reflect the name of the parties in the sale deed. Further, it is pertinent to note that the measurements in the Sale deed as to the land are vague and is not backed by measurements of Adjacent plots, which is a usual norm in order measure the area of plot being sold. **Further, the land aring survey number 272/10 listed as item 2 in the Sale deed it is recorded that the land with the following survey number is 00192 Square Meters and if converted it amounts 2066.6 Sq. Ft. and not 2092 Sq. ft as falsely claimed by petitioner.***

*5. With regard to para 7 of the Report, the Sale deed in itself is wrong and since there is no entry of possession in the Natham A register, nor there is any registry in the Patta.*



W.P.No.17164 of 2022

6.The Report of the Advocate Commissioner is solely based on the measuring the difference between the Sale deed presented by the petitioner without going into the facts and merits of the same and does not disclose whether the land as claimed by the petitioner belongs to the Government or Private Land when a specific direction was given to ascertain the extent of petitioner's land and Grama Natham.

12.Heard Mr.S.Prabhu, learned counsel for the petitioner, Mrs.S.Mythreye Chandru, learned Special Government Pleader for R1, R2, and Mr.Veda Bagat Singh, learned Special Government Pleader for R3 and R4.

13. The property has been described in the sale deed dated 06.07.2006, as follows:

அயிட்டம்-2 கிராம நத்தம் பழைய சர்வே எண்.39/5 பார்ட் (நத்தம் நிலவரி திட்டத்தின்படி வழங்கப்பட்ட புதிய சர்வே எண்.272/10-00192 ச,மீ)-ல் விஸ்தீரணம் 2092 சதுர அடிகள் கொண்ட காலி மனைக்கு நான்கு எல்லைகள் விவரம். வடக்கில் - பெருமாள் கோயில் தெரு, தெற்கில், ஆரிகிருஸ்ணபிள்ளை காலி மனை & பிள்ளை காலி மனை & கி.ந.பு.சர்வே எண்.272/9-ன் மனை, கிழக்கில் . ராஜி நாயகர் வீடு, மேற்கில் . ஆரிகிருஸ்ணபிள்ளை வீடும் பிழக்கடை காலி மனை இதன் மத்தியில் மேற்படி விஸ்தீரணமுள்ள காலிமனையும்.



W.P.No.17164 of 2022

14.It is clear from the above that the old survey number of the property was 39/5 (part) and after resurvey, it was assigned new Survey No.272/10 measuring about 192 Sq.meters. While mentioning about the total extent of the property, it has been mentioned as 2092 sq.ft and the four boundaries have also been given.

15.The main objection that was taken by the learned Special Government Pleader appearing on behalf of the respondents 1 to 3 and the learned counsel appearing on behalf of the 4<sup>th</sup> respondent was that the very extent of the property that has been mentioned in the sale deed was wrong. It was submitted that 192 sq.meters translates itself into 2066 sq.ft only and the sale deed mentioning the extent as 2092 sq.ft is not correct. In view of the same, it was contended that there is a dispute on the total extent of the property and hence, the relief as sought for in this writ petition cannot be decided in a writ jurisdiction and the petitioner has to necessarily approach a Competent Civil Court.

16.It was further contended on the side of the respondents that the records maintained by the 2<sup>nd</sup> respondent shows that Survey No.272/2010 has been classified as "Gali Natham". The petitioner has put up construction in this property classified as "Gali Natham". Till date, the name of the petitioner has not been reflected in the revenue records and it continues to remain as a "Gali Natham", in the records maintained by the 2<sup>nd</sup> respondent. In view of the same, it was contended that the 4<sup>th</sup> respondent is questioning the very title of the petitioner to the subject property.



*W.P.No.17164 of 2022*

17.The Advocate Commissioner, who was present before this Court submitted that he took the help of the Sub Inspector of survey and other Officials and the property was measured on all sides based on the sale deed dated 06.07.2006. After measurement, it was seen that an extent of 47 sq.ft has been encroached and the panchayat has put up a concrete sewage channel in the property belonging to the petitioner. It is also mentioned that there is an extent of 69 feet width of road that is available in front of the petitioner's house. To explain the report, the learned Advocate Commissioner also brought to the notice of this Court the report and sketch of the Sub Inspector of Survey found at page 15 of the report.

18.The learned counsel for the petitioner submitted that even if the total extent as described in the schedule of property to the sale deed is only 2066 sq.ft [equivalent to 192 sq.meters], there is still an encroachment of 21 sq.ft. Hence, it was contended that the 4<sup>th</sup> respondent ought not to have straightway encroached upon the property and put up the sewage channel by causing damage to the property belonging to the petitioner. The learned counsel submitted that there was 69 feet of road that is available in front of the house of the petitioner and the 4<sup>th</sup> respondent could have easily laid the sewage channel in the existing road and thereby, there was no requirement to encroach upon the property belonging to the petitioner. The learned counsel therefore submitted that the extent of property that has been encroached upon by the 4<sup>th</sup> respondent must be restored and the petitioner must be paid compensation for the loss sustained by him due to the damage done to his property.



*W.P.No.17164 of 2022*

19.This Court has carefully considered the submissions made on either side and the materials available on record.

20.The subject property was originally purchased by the petitioner in the year 2006 from Balaji and Nageswara Rao through a registered document bearing no.11438/2006. The petitioner had constructed a house to an extent of 600 sq.ft. That apart, he had also put up a front yard, wire fencing compound wall and a small bathroom measuring an extent of about 4 x 6 feet. The sale deed specifically describes the property and the extent of the property by providing the boundaries. It is true that there is some discrepancy with respect to the extent of property since 192 sq.meters translates itself only to 2066 sq.meters and it cannot be 2092 sq.meters as mentioned in the sale deed. It is now a well settled law that where there is a dispute between the extent and the boundaries, the boundaries alone will prevail and it is seen that the boundaries have been specifically mentioned on all four sides.

21.The petitioner started making his objections even when the 4<sup>th</sup> respondent had started the work of constructing the concrete sewage channel on 08.02.2022. When such objection was made, it was the duty of the 4<sup>th</sup> respondent to conduct a prior survey and should have put the petitioner on notice if at all any construction was proposed to be made covering the portion of the property belonging to the petitioner. This is the minimum requirement that a public official is expected to fulfill wherever it involves a complaint of encroachment into the property belonging to an individual. However, the 4<sup>th</sup> respondent has proceeded further to dig the channel and on 17.02.2022, had demolished a portion of



W.P.No.17164 of 2022

the property and erected the concrete sewage channel. Probably, the 4<sup>th</sup> respondent was under the impression that if he makes it a fait accompli, the petitioner will be driven to some Civil Court and the proceedings will be kept pending and nothing further could happen. Fortunately for the petitioner, this Court immediately intervened and passed an order on 09.02.2023, appointing an Advocate Commissioner and directing him to conduct a survey with the help of the surveyor. The report of the Advocate Commissioner shows that there is an encroachment into the property belonging to the petitioner.

22.The 4<sup>th</sup> respondent, who has filed the objections to the Commissioner's report has merely stated that there is discrepancy in the extent and the name of the petitioner has not been entered in the revenue records and it continues to be shown as Grama Natham vacant land insofar as Survey No.272/10 is concerned.

23.When it comes to a Grama Natham land, it is now too well settled that the person who is in possession of the property will be considered to be its owner. Useful reference can be made to the judgment of this Court in *The Executive Officer .v. V. Swaminathan and others* reported in **2004 3 CTC 270**, which was subsequently followed in *R. Muniasamy .v. The District Collector, Virudungar and Others* reported in **2007 WLR 804**. Insofar as Grama Natham lands are concerned, patta is not issued in the name of an individual and hence, it cannot be assumed that the individual cannot own the property which has been classified as Grama Natham. The title to the property is traceable from the year 2006 onwards and the same is by virtue of a registered sale deed executed in favour of the petitioner. Therefore,



*W.P.No.17164 of 2022*

the stand taken by the 4<sup>th</sup> respondent in the report as if the petitioner does not have a right over the property since his name has not been entered in the revenue records, is liable to be rejected by this Court.

24.The next ground that has been raised in the objections filed by the 4<sup>th</sup> respondent is with regard to the discrepancy in the extent of property. This Court has already taken this issue into consideration. The sale deed mentions the total extent of the property in Survey No.272/2010 as 192 sq.meters. Hence, the petitioner has a right over an extent of 2066 sq.ft. This Court is not taking away the title claimed by the petitioner for an extent of 2092 sq.ft as mentioned in the sale deed. However, for the limited extent of the dispute that is involved in this case, even if it is assumed that the petitioner has a right and title to only 2066 sq.ft, even then there is an encroachment to an extent of 21 sq.ft [2066 sq.ft – 2045 sq.ft]. Hence, the 4<sup>th</sup> respondent cannot take advantage of the so called discrepancy in the measurement shown in the sale deed of the petitioner and deny the entire right and title of the petitioner over the property situated at Survey No.272/2010. Accordingly, this objection taken by the 4<sup>th</sup> respondent is also rejected.

25.The next issue to be gone into is with regard to the remedy to be given to the petitioner. The petitioner has established his right over the property situated at Survey No.272/2010 atleast to an extent of 2066 sq.ft. Where there is a right there is a remedy on the Principle of Ubi Jus ibi remedium. Hence, the petitioner having established his right and the title over the property must be given a remedy by this Court.



W.P.No.17164 of 2022

WEB COPY

26. Acting upon the report filed by the Advocate Commissioner, this Court finds that there is an encroachment to an extent of 21 sq. feet into the property belonging to the petitioner. That apart, the front yard, wire fencing compound wall and the bathroom that was put up by the petitioner in the property has been demolished and hence, the petitioner must be compensated by way of damages. The 4<sup>th</sup> respondent ought to have been more careful before undertaking the work of constructing concrete sewage channel by ensuring that the construction does not encroach upon any private property. The 4<sup>th</sup> respondent ought to have at least acted upon the objections made by the petitioner when the work was about to commence. The 4<sup>th</sup> respondent should not have unilaterally gone ahead with the work in spite of the objections made by the petitioner. For such high-handedness shown by the 4<sup>th</sup> respondent, the Panchayat has to restore the property of the petitioner and pay compensation for damages inflicted to the property.

27. In the light of the above discussion, there shall be a direction to the 4<sup>th</sup> respondent to immediately restore the property belonging to the petitioner to an extent of 21 sq. ft. This process shall be completed within a period of **four weeks** from the date of receipt of copy of this order. Insofar as the damages are concerned, this Court fixes a sum of Rs.25,000/- [Rupees Twenty Five Thousand Only] payable by the 4<sup>th</sup> respondent to the petitioner, within a period of **four weeks** from the date of receipt of copy of this order.



W.P.No.17164 of 2022

WEB COPY

28. In the result, this writ petition is allowed in the above terms. No costs.

10.04.2023

KP

Internet : Yes/No

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

1. The District Collector  
Collectorate Compound  
Kanchipuram District - 631 501.
2. The Thasildhar  
Kundrathur Taluk Office  
Kundrathur Taluk  
Kanchipuram District- 631 501.
3. The Block Development Officer  
Kundrathur Union, Sarala Nagar  
Kancheepuram SH- 110  
Kodambakkam, Padappai Village  
Sriperumpudur Road  
Kanchipuram District - 631 501.
4. The President  
Vaipur Village, Mathur Post  
Kundrathur Taluk  
Kanchipuram District - 631 501.



WEB COPY



*W.P.No.17164 of 2022*

**N.ANAND VENKATESH, J.**

KP

**W.P.No.17164 of 2022**

**10.04.2023**