



WEB COPY

W.P.No.19759 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.19759 of 2023

D.Loganathan

... Petitioner

Vs.

1.The Tahsildar,
Taluk Office Building,
304/936, TH Road,
Ellaiamman Koil Street,
Tiruvottiyur,
Chennai – 600 019.

2.The District Collector,
First Floor, Collectorate Building,
Thiruvallur District – 602 001.

3.Mrs.P.Padmavathy

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st and 2nd respondents to consider the representation dated 13.04.2023 to demarcate the actual land of 16,988 sq.ft from 19,375 sq.ft as per the mortgage deed in Document No.8120 of 2012 dated 05.11.2012 and sale certificate No.23/2019, registered in Document No.5915 of 2019 dated 25.07.2019.



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For Petitioner : Mrs.R.Varalakshmi
For R1 & R2 : Mr.D.Ravichander,
Special Government Pleader

ORDER

The relief sought for in the writ petition is to direct the 1st and 2nd respondents to consider the representation dated 13.04.2023 to demarcate the actual land of 16,988 sq.ft from 19,375 sq.ft as per the mortgage deed in Document No.8120 of 2012 dated 05.11.2012 and sale certificate No.23/2019, registered in Document No.5915 of 2019 dated 25.07.2019.

2.The issues raised in the present writ petition were adjudicated by this Court in a batch of writ petitions in ***W.P.No.37519 of 2016 & etc., batch***, and a judgment was delivered on **19.06.2023** and the relevant paragraphs of the judgment are extracted hereunder:

“36. Section 9 of the Code of Civil Procedure unambiguously contemplates that “The Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred”.



37. *Therefore, a special enactment has no relevance with reference to a right of the parties to approach the competent Civil Court of law to resolve all nature of civil disputes including boundary dispute, survey dispute, title dispute, ownership or otherwise. Therefore, neither the parties nor the authorities need to create an impression that in the event of boundary dispute, the parties have to approach the authorities at the first instance. It is not required that the aggrieved persons, in the event of boundary dispute has to approach the authorities for fixing the boundary, they are at liberty to approach the Civil Court of law under Section 9 of the Code of Civil Procedure, which is unambiguous in this regard.*

38. *Submitting an application for fixing boundary is an option available to the aggrieved persons. Once an application is filed, whether the application is entertainable under the provisions of the Act is to be determined by the authorities and only if it is falling within the ambit of the Act, then alone the survey or fixing of boundary is to be undertaken. Even in this case, the authorities are bound to relegate the parties to the competent Civil Court of law under Section 14 of the Act.*



39. *It is contended by the petitioner that the authorities are making certain findings regarding the title, ownership in their order, while rejecting the applications. Such findings made by the authorities either in the patta proceedings or in the proceedings under the Survey and Boundaries Act are restricted and to be understood only for the purpose of arriving a conclusion under the provisions of the Act and the said patta proceedings or the proceedings under the Survey and Boundaries Act would not confer any title or be taken as a conclusive decision, more specifically under Section 35 of the Evidence Act.*

40. *Accordingly, the respondents are directed to consider the representations / applications submitted by the petitioners in the order of seniority and by following the procedures as contemplated under the Governmental orders and in consonance with the provisions of the Survey and Boundaries Act, 1923 and pass appropriate orders on merits and in accordance with law. Wherever the applications are already disposed of and appeals provided under the Act has been filed, then such appeals are to be decided on merits and in consonance with the provisions of the Survey and Boundaries Act.*



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3. In view of the fact that the case of the petitioner is also similar to that of the cases (cited *supra*), this writ petition stands disposed of. No costs.

05.07.2023

skr

Index : Yes

Speaking order

Neutral Citation : Yes

To

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S.M.SUBRAMANIAM, J.

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