



DATED: 17.07.2023

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

THE HON'BLE MR.JUSTICE P.D.AUDIKE SAVALU

W.P.No.17642 of 2021

.. Petitioner

Vs.

1. The Collector
Thiruvallur, Thiruvallur District.
2. The Revenue Divisional Officer
Avadi, Thiruvallur District.
3. The Municipal Commissioner
Avadi, Thiruvallur District.
4. The Tahsildar
Avadi Taluk, Avadi
Thiruvallur District.
5. The Inspector of Police
Muthapudupet Police Station
Muthapudupet, Avadi
Chennai – 600 055.
6. The Sub Registrar
Avadi, Thiruvallur District.

.. Respondents



W.P.No.17642 of 2021

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Prayer: Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus, directing the respondents 1 to 5 to take immediate action to remove the encroachments made by the seventh respondent on the land comprised in S.No.158 (Old No.6/3) of Muthapudupet Ward – B, Avadi Taluk, Thiruvallur District and forbear the seventh respondent from making any further encroachments in the land comprised in S.No.158 (Old S.No.6/3) of Muthapudupet Ward – B, Avadi Taluk, Thiruvallur District which is classified as Street in the revenue records.

For the Petitioner : Mr.P.Mohanraj

For the Respondents : Mr.P.Muthukumar
State Government Pleader
assisted by Mrs.R.Anitha
Special Government Pleader
for R1 to R6
Mr.N.A.Nissar Ahmed
Senior Counsel
for Mr.I.Kowser Nissar
for R7



W.P.No.17642 of 2021

WEB COPY

ORDER
(Made by the Hon'ble Chief Justice)

Heard Mr.P.Mohanraj, learned counsel for the petitioner, Mr.P.Muthukumar, learned State Government Pleader assisted by Mrs.R.Anitha, learned Special Government Pleader for respondents 1 to 6 and Mr.N.A.Nissar Ahmed, learned Senior Counsel appearing for Mr.I.Kowser Nissar, learned counsel for respondent 7.

2. The present writ petition is filed for removal of encroachment made by the seventh respondent on the land comprised in S.No.158 (Old No.6/3) of Muthapudupet Ward – B, Avadi Taluk, Thiruvallur District and further injunction restraining the seventh respondent from making further encroachment.

3. According to learned counsel for the petitioner, the encroachment is made on the street by the seventh respondent. The petitioner has filed documents to substantiate the same. The sketch of land Survey No.158 is filed and the Authorities have also stated that the said sketch is correct.



W.P.No.17642 of 2021

WEB COPY

4. Learned State Government Pleader has filed a status report. It is stated that an enquiry was conducted on 29.09.2021, wherein, the son of the petitioner placed reliance on the Demarcation Block Map (DBM) and submitted that the Survey No.158 is classified as a 'Street'. The seventh respondent placed reliance on the FMB sketch and the title documents to submit that Survey No.6/3, to an extent of 10 cents and 5 cents are classified as 'House sites' and the same is never classified as road or pathai.

5. It is further submitted that the Taluk Deputy Surveyor has submitted his report on 29.09.2021 and stated that in the Town Survey Register, Survey No.158 is shown as Ryoth Punjai to an extent of 0940 Sq.Mtrs. and patta was granted to one Kuppusamy Naidu. The seventh respondent has purchased 15 cents in Survey No.6/3 and 648 Sq.Ft in S.No.15/2 from one Kannaiya Naidu. The seventh respondent also purchased 15 cents in T.S.No.139 and 648 Sq.Ft in T.S.No.158 and was granted patta.



W.P.No.17642 of 2021

WEB COPY

6. The status report further submits that after verification and perusal of the report and the records submitted by the seventh respondent, it is ascertained that:

a. The subject land in S.Nos.6/3B1A and 15/A1 in Muthapudupet Village, Avadi Taluk in UDR 'A' Register is registered in Village Accounts as follows:

<i>Si. No</i>	<i>Survey No.</i>	<i>Extent (in Hectare)</i>	<i>Patta Number and Pattadhar Name</i>
1	6/3B1A	0.68.5	Patta No.222, Munusamy Naidu
2	15/2A1	0.13.5	Patta No.27, Kuppusamy Naidu

b. In Town Survey Records, the subject lands are recorded as follows:

<i>Si. No</i>	<i>Town Survey No.</i>	<i>Old Survey No.</i>	<i>Extent (in Square Meter)</i>	<i>Adangal</i>	<i>How the holdings is utilised</i>
1.	158	6/2 pt, 15/2A pt	940	27, Kuppusamy Naidu	Bhoosththi Pathai

c. The Taluk Deputy Surveyor has reported that the above said subject land involved in this case is wrongly registered as "Bhoosththi Pathai" in Town Survey Records and (DBM) Demarcation Block Map.

7. It is further submitted in the status report that based on the



W.P.No.17642 of 2021

WEB COPY

above factual reports, the land in Town Survey No.158 (Ward-B, Block-6) & Old Survey No.6/2 pt and 15/2A pt of Muthapudupet Village, Avadi Taluk was wrongly registered as Bhoosththi Pathai in Town Survey Records and the DBM, prepared and published on 27.04.2005. There is no reference of mark of Bhoosththi Pathai / Street / Road in the original old Revenue records of FMB, Village Map, 'A' – Register and Adangal and hence, it is confirmed that the above said Town Survey No.158 of Muthapudupet Village is a Ryot Punjai patta land and the error as Bhoosththi Pathai in Town Survey Records was made at the time of Town Survey Settlement.

8. It is further submitted that the old Survey Number 6/3 of Muthapudupet Village, Avadi Taluk mentioned by the petitioner in his affidavit is not correlated with the Town Survey No.158 of Muthapudupet Village, Avadi Taluk.

9. It appears that the disputed question of fact exists. If



W.P.No.17642 of 2021

WEB COPY

according to the petitioner, the survey is not correct, the petitioner has the liberty to challenge the said survey before the Appellate Authority. The disputed question of fact cannot be adjudicated in the writ jurisdiction.

10. In view of that, the petitioner may avail the remedy available to him by challenging the survey or may file such other proceedings, as may be permissible under law. It is made clear that the contentions of the respective parties are kept open.

11. The writ petition, as such, is disposed of. There will be no order as to costs. Consequently, W.M.P.Nos.18787 & 18789 of 2021 are closed.

(S.V.G., CJ.)

(P.D.A., J.)

17.07.2023

Index : Yes/No
Neutral Citation : Yes/No

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To

Page 7 of 9



W.P.No.17642 of 2021

WEB COPY

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W.P.No.17642 of 2021

THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESAVALU, J.

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W.P.No.17642 of 2021

17.07.2023