



WEB COPY

W.P.No.21492 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.21492 of 2023

Marimuthu

... Petitioner

Vs.

1.The Tahsildar,
Kallakurichi Taluk,
Kallakurichi District.

2.The Taluk Surveyor,
Kallakurichi Taluk,
Tahsildar Office,
Kallakurichi District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to survey the petitioner's land comprised in Survey Number 65/49 at Chinnamampattu Village, Kallakurichi District on the basis of petitioner application challan number 20230313006315 dated 13.03.2023.

For Petitioner

: Mr.S.Periyasamy

For Respondents

: Mr.G.Krishna Raja,
Additional Government Pleader



ORDER

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The writ petition has been filed for directing the respondents to survey the land of the petitioner comprised in S.No.65/49 at Chinnamampattu Village, Kallakurichi District on the basis of petitioner's application challan number 20230313006315 dated 13.03.2023.

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



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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.

3. In view of the fact that the case of the petitioner is also similar to that of the cases (cited *supra*), the case of the petitioner is also to be considered on the same line.



4. Accordingly, this Writ Petition stands disposed of. No costs.

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skr

Index : Yes

Speaking order

To

1.The Tahsildar,
Kallakurichi Taluk,
Kallakurichi District.

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Kallakurichi Taluk,
Tahsildar Office,
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S.M.SUBRAMANIAM, J.

skr

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