



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.27676 of 2023
and W.M.P.No.27147 & 27148 of 2023

1.R.Arputham

2.R.Chelladurai

3.R.Mohan

... Petitioners

Vs.

1.The Sub-Divisional Magistrate,
Karaikal.

2.The State Rep. by
Station House Officer,
Neravy Police Station, Neravy.

3.The Tahsildar,
Taluk Office,
Karaikal.

4.The Assistant Director (Survey and Land Records)
Branch Survey Office,
Karaikal.

5.G.Bala Krishnan

...Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order No.7558/DCR/SDM/B3/2023 dated 15.09.2023, passed by the 1st respondent and quash the same as illegal, arbitrary, without jurisdiction and consequentially direct the respondents not to initiate any proceedings with respect to the subject matter property in R.S.No.136/11 and Old S.No.579, 580 to an extent of 3 ares and 10 centiares or 23 $\frac{1}{4}$ Kuzhi, in Keezhamanai Village, Neravy Commune Panchayat, Karaikal District.

For Petitioner : Mr.P.Dinesh Kumar

For Respondents : Mr.K.S.Mohandoss
Public Prosecutor (Puducherry)
for R1 to R4

Mr.Sai Krishnan for R5

ORDER

This writ petition has been filed challenging the impugned proceedings of the 1st respondent dated 15.09.2023, wherein, the 1st respondent has directed the Tahsildar, Karaikal to conduct the filed survey on 21.09.2023 and the concerned Police Station has also been directed to provide adequate police protection to enable the officials to survey the subject property.



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2. Heard Mr.P.Dinesh Kumar, learned counsel appearing on behalf of the petitioner, Mr.K.S.Mohandoss, learned Public Prosecutor (Puducherry) appearing on behalf of respondents 1 to 4 and Mr.Sai Krishnan, learned counsel appearing on behalf of the 5th respondent.

3.The facts leading to the filing of the present writ petition can be traced to the order passed in CrI.O.P.No.8359 of 2023, dated 16.06.2023 and for proper appreciation, the entire order is extracted hereunder:

This Criminal Original Petition has been filed to direct the 1st respondent police to give adequate police protection to the petitioner for constructing the compound wall in the petitioner's property comprised in R.S.No.136/11, Old Sy.No.579, 580, Keezhmanai (Uzhiyapathu) Village, Neravy Commune Panchayat, Neravy Sub Registration District, Neravy, Puduchery.

2. Learned counsel for the petitioner submitted that, there was a dispute in connection with the property in O.S.No.20 of 2010 between the petitioner and respondents 2 to 4. Therefore, petitioner filed a Suit in O.S.No.20 of 2010, seeking declaration that, the petitioner is the absolute owner of the said property and for



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consequential permanent injunction restraining the respondents 2 to 4 from interfering with the petitioner's possession and enjoyment of the suit property. After contest suit was decreed in favour of the petitioner on 28.10.2011. The respondents 2 to 4 and one Rajagopal filed an Appeal in A.S.No.168 of 2012 against the said judgment. Petitioner filed E.P.No.32 of 2012 in O.S.No.20 of 2010 for violating the Court order. Order of arrest was passed against respondents 2 to 4. Against the said order, respondents 2 to 4 and one Rajagopal filed C.R.P.No.1674 of 2015. Both A.S.No.168 of 2012 and C.R.P.No.1674 of 2015 were taken up together for hearing and were dismissed for default for non-prosecution. During the pendency of Appeal, Rajagopal died. After failing in civil forums, respondents 2 to 4 are still interfering with the possession and enjoyment of the suit property by the petitioner and they are preventing petitioner from constructing a compound wall. Therefore, this petition is filed for the aforesaid relief.

3. Learned counsel for the 1st respondent submitted that, earlier a petition in Crl.O.P.No.26065 of 2017 filed by the petitioner for police protection was dismissed. Thus, he prays for dismissal of this petition.

4. Learned counsel for the respondents 2 to 4 seeks time to file counter.



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5. In view of the facts narrated above, this Court finds that, the respondents 2 to 4 had lost before the Trial Court and Appellate Court. Even if the counter is filed, no useful purpose would be served. Therefore, this Court directs the 1st respondent to consider the petitioner's representation dated 04.12.2022 and provide necessary police protection, as per the procedure established by law.

4.Pursuant to the above order, steps were taken by the 1st respondent to conduct the survey in the subject property and accordingly, proceedings dated 15.09.2023 was issued and the same has been put to challenge in the present writ petition.

5.The learned Public Prosecutor appearing on behalf of respondents 1 to 4 submitted that the proceedings were issued by the 1st respondent in obedience to the order passed by this Court in CrI.O.P.No.8359 of 2023 and the officials are only going to conduct a field survey on 21.09.2023. Since some resistance was expected, the concerned Police Station was also directed to provide police protection.

6.The learned counsel for the petitioners submitted that the order was passed in Criminal Original Petition only on the ground that the appeal filed by the petitioners in A.S.No.168 of 2012 and the Civil Revision Petition filed in CRP No.1674 of 2015 were



dismissed for default and therefore, the Decree passed in the Suit has become final.

However, as a subsequent development, petitions were filed for restoration in CMP Nos.7407 & 7408 of 2021 and these restoration petitions were allowed by an order dated 09.08.2023 and as a result, both the Appeal as well as the Civil Revision Petition are now restored to file. The learned counsel further submitted that there is an order of status quo that has already been passed in Civil Revision Petition and by virtue of the restoration of the Civil Revision Petition, the status quo order is automatically restored. Therefore, the learned counsel pleaded that the direction issued by this Court must be kept in abeyance till the disposal of the Appeal and the Criminal Revision Petition.

7.The learned counsel appearing for the 5th respondent submitted that the Decree was passed in favour of the 5th respondent as early as in the year 2011 and from then on, the petitioners are resorting to delaying tactics only to defeat the 5th respondent from enjoying the fruits of the Decree. The learned counsel submitted that the subject property is a vacant land and hence, the 5th respondent wanted to safeguard/secure the property by putting up a compound wall. This is sought to be resisted by the petitioners. It was therefore contended that there is absolutely no bonafides on the part of the petitioners to maintain this writ petition and hence, the learned counsel sought for the dismissal of the writ petition.



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

9.The property in question is a vacant land. Therefore, the possession to the said property will only run along with the title. The title to the property is now a subject matter in A.S.No.168 of 2012. Therefore, the title and possession to the property will be subject to the final result in A.S.No.168 of 2012.

10.It is clear from the submissions made by the learned counsel for the 5th respondent that what is now being attempted is only to conduct a survey in the subject property and to put up a compound wall. This act does not automatically result in handing over the entire possession of the property to the 5th respondent. At the risk of repetition, this Court once again holds that the possession to the property will depend upon the title, since it is a vacant property. Therefore, the person in whose favour, the title is ultimately declared will automatically take the possession of the property also. Hence, by merely surveying the property and putting up a compound wall, it cannot be construed that the possession is being handed over to the 5th respondent. This clarity will sufficiently take care of the right and interest of the petitioners. Hence, it is left



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open to the concerned authorities to conduct the survey and the compound wall can also be constructed and all these will be subject to the final result in the Appeal. Whoever, ultimately, succeeds in the appeal, will be declared to be holding the title over the property and automatically the possession will also follow the title.

11. This writ petition is disposed of in the above terms. No Costs. Consequently, connected miscellaneous petitions are closed.

21.09.2023

Index : Yes/No
Internet : Yes/No
Speaking/Non-Speaking Order
Neutral Citation : Yes/No
ssr

Note: Issue Order Copy on 22.09.2023

To

1. The Sub-Divisional Magistrate,
Karaikal.
2. The State Rep. by
Station House Officer,
Neravy Police Station, Neravy.
3. The Tahsildar,
Taluk Office,
Karaikal.



4. The Assistant Director (Survey and Land Records)
Branch Survey Office,
Karaikal.

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5. The Public Prosecutor,
High Court, Madras.



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N.ANAND VENKATESH, J

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