



W.P.No.29299 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.29299 of 2023
and WMP No.28920 of 2023

Suresh Guntur

... Petitioner

versus

1. The District Collector,
Chennai District,
M.Singaravelar Maaligai,
No.62, Rajaji Salai,
Chennai – 600 001.
2. The Tahsildar,
Office of Tahsildar,
TNHB Sholinganallur, Chennai 119.
3. The Assistant Surveyor,
Taluk office, No.1, First Cross street,
Kumaran Nagar, Sholinganallur,
Chennai 119
4. S.Sathyanarayanan
5. Mrs.M.Latha Rajan Alias latharasan
6. Marry Jennifer

...Respondents

Writ Petition filed under Article 226 of Constitution of India, to issue

Pg.Nos.1/10



W.P.No.29299 of 2023

a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in Na.Ka.No.1842/2023/A2 dated 01.09.2023 to quash the same as illegal and passed in contravention of the order of this Court in WP No.14368 of 2023 dated 05.05.2023 and consequently direct the 1st respondent to take suitable action against the 2nd and 3rd respondent for lapses, negligence and dereliction duty in conducting survey in utter disregard to the provisions of the Tamil nadu Survey and boundaries Act, 1923.

For Petitioner : Mr.R.Chandra Sudan
For Respondents : Mr.P.Gurunathan
Additional Government Pleader
for R1 to R3
No appearance for R4
Mr.R.Muralidharan for R5

ORDER

This writ petition has been filed challenging the order passed by the respondents in Na.Ka.No.1842/2023/A2 dated 01.09.2023.

2. The case of the petitioner is that he is the owner of the house bearing Plot No.3, Sri Babuji nagar, Injambakkam Village, Solinganallur Taluk, Chennai District, measuring an extent of 2632 Sq.ft comprised in Old Survey No.34, Old Patta bearing no.434, 1865, 6688 and present patta



W.P.No.29299 of 2023

No.7923 issued by the revenue authorities, having purchased the same through a sale deed dated 29.03.2019, registered as document No.2787 of 2019 in the office of Sub-Register, Neelankarai. The petitioner had purchased the property with well-marked boundaries and compound wall and the same has been reflected in the Annexure 1A of the Sale Deed. The title of the property is traceable since 1982. The 4th respondent claiming right over the petitioners' property through a dubious power of attorney had lodged a complaint before the inspector of Police, Neelankarai against the petitioner. Based on the complaint given by the 4th respondent, the petitioner was called for an enquiry. Thereafter, the petitioner had lodged a Caveat petition Nos.127 of 2023 and 102 of 2023 before the Sub Court and District Munsif, Alandur and the same is pending. Suddenly on 28.04.2023, the petitioner received a notice from the 2nd respondent calling upon him to present all original documents to measure the property. The petitioner had submitted a reply notice on 26.05.2023 raising certain objections and sent another representation on 10.08.2023. Since the respondent did not act upon his reply notice/representation, the petitioner filed WP No.14368 of 2023 challenging the said notice dated 28.04.2023 before this Court and this



W.P.No.29299 of 2023

Court vide order dated 05.05.2023 had disposed of the said writ petition with a direction to the 2nd respondent to act in accordance with the guidelines issued in WP (MD) No.28520 of 2022 dated 20.12.2022. Due to the threat given by the 4th respondent along with henchmen, the petitioner filed WP No.27204 of 2023 seeking for protection to save his life and limb from the unscrupulous elements, wherein this Court had granted an interim protection and ordered notice to respondents 5 and 6. While that being so, the 2nd respondent had passed an impugned order in Na.Ka.No.1842/2023/AA dated 01.09.2023 wherein it has been stated that the petitioner had encroached upon the adjacent land and constructed a compound wall. Challenging the said impugned order, the present writ petition has been filed before this Court.

3. The learned counsel for the petitioner would submit that the impugned order has been passed in an hasty manner, based on the survey conducted by the 3rd respondent, which is not in accordance with the order passed by this Court in WP No.14368 of 2023. The learned counsel for the petitioner further submitted that Section 9 of the Tamil Nadu Survey and



Boundaries Act was not followed by the authorities concerned and no notice has been issued to the petitioner as well as to the adjacent land owners and also to the interested parties, before conducting an enquiry, as mandated in the order passed by this Court.

4. The petitioner herein challenging the earlier notice issued by the 2nd respondent, filed writ petition No.14368 of 2023 before this Court and this Court vide order dated 05.05.2023 had disposed of the writ petition. The relevant portion of the order is extracted hereunder :-

5. The directions made in WP (MD) No.28520 of 2022 dated 20.12.2022 are extracted hereunder for ready reference:

“2. The Writ Petition is disposed of with the following directions:~

(I) The survey authority will issue notice to the writ petitioner as well as the adjacent land owners and also to the interested persons, if any.

(II) Enquiry shall be held. During enquiry, objections raised by the adjacent land owners / interested persons shall be considered.

(III) If according to the jurisdictional authority, the objections are without any basis, the same shall be overruled and the objectors shall be informed accordingly. But the survey will be conducted only after a period of six



weeks so that the objector can move the concerned Court for injunction. If before the proposed date of survey, the objector is unable to obtain any injunction order, the survey can very well go on. It is open to the parties to serve memo of instructions to the surveyor at the time of conducting the survey. The same will be borne in mind. While it cannot be binding on the surveyor, the same will be taken note of.

(IV) If the jurisdictional authority finds objections to be having substance, then, he shall call upon the applicant to move the jurisdictional civil Court for agitating his rights.

(V) If required, the survey authority is empowered to seek aid of the jurisdictional police and the jurisdictional police are mandated to grant police protection.

(VI) It is made clear that at the end of the survey exercise, survey stones alone can be installed. The exercise of survey and demarcation undertaken pursuant to the direction of this Court can never result in dispossession of any party. No person shall put up fencing at the time of survey by using police aid. The Survey Authority will pass order within a

period of six weeks after service of notice on the interested persons.

(VII) A copy of the survey report will be served on the parties also.”

6. In the case on hand, it appears that on a land dispute among the adjacent land owners, the impugned notice has been issued calling upon all the adjacent land owners and the petitioners to extend their cooperation for a survey of the lands. In the circumstances of the case, the writ petition stands disposed of with the directions to the respondents to follow the directions made in WP (MD) No.28520 of 2022



W.P.No.29299 of 2023

dated 20.12.2022 and conduct the survey, and complete the same within a period of six weeks from the date of receipt of a copy of this order.

5. The learned Additional Government Pleader would submit that the based on the letter sent by the Inspector of Police, Neelangarai Police station, the 3rd respondent had conducted a survey and found that the petitioner had encroached upon the adjacent lands and constructed the compound wall and therefore, the order has been passed.

6. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

7. It is seen from records that the petitioner is in absolute possession and enjoyment of the property and that the survey has been conducted and impugned order has been passed, without following the directions issued by this Court in WP No.14368 of 2023. Admittedly, there is a dispute between the petitioner and the neighboring land owners with regard to title, possession and enjoyment of the property and the same has



W.P.No.29299 of 2023

to be decided by the appropriate Civil Court, based on the oral and documentary evidence, which cannot be decided in this writ petition and therefore, under such circumstances, the impugned order passed by the 2nd respondent is set-aside. The parties are at liberty to approach the appropriate Civil Court and work out their remedy in the manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

07.11.2023

Speaking/Non-speaking order

Index: Yes/No

Neutral Citation : Yes/No

rka



W.P.No.29299 of 2023

To

1. The District Collector,
Chennai District,
M.Singaravelar Maaligai,
No.62, Rajaji Salai,
Chennai – 600 001.
2. The Tahsildar,
Office of Tahsildar,
TNHB Sholinganallur, Chennai 119.
3. The Assistant Surveyor,
Taluk office, No.1, First Cross street,
Kumaran Nagar, Sholinganallur,
Chennai 119



WEB COPY



W.P.No.29299 of 2023

P.VELMURUGAN, J.
rka

W.P.No.29299 of 2023
and WMP No.28920 of 2023

07.11.2023

Pg.Nos.10/10