



W.P(MD)No.1911 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD).No.1911 of 2023
and WMP(MD)No.4239 of 2023

1. A.Selvaraj
2. Kalieswaran
3. N.Chithravelu
4. S.Murugesan

... Petitioners

Vs

1. The District Collector,
O/o. the District Collector,
Sivagangai District, Sivagangai.
2. The District Revenue Officer,
O/o. the District Revenue Officer,
Sivagangai District, Sivagangai.
3. The Revenue Divisional Officer,
O/o. the Revenue Divisional Officer,
Sivagangai District, Sivagangai.
4. The Tahsildar,
O/o. the Tahsildar, Kalayarkovil Taluk,
Sivagangai District.



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5. The Assistant Director of Survey,
O/o. the Tahsildar, Kalayarkovil Taluk,
Sivagangai District.
6. The Village Administrative Officer,
Kurundhani Variyanenthal Group,
Kalayarkovil Taluk, Sivagangai District.
7. Shanmugam
8. Muthusamy

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, seeking direction to consider the petitioners representation, dated 20.01.2023 and forbearing the respondents 2 to 6 from surveying and issuing revised patta in respect of the survey nos. 167/5H, 167/5K, 167/5I and 167/5G, situated in Porupanenthal Village, Kurundhani Variyanenthal Group, Kalayarkovil Taluk, Sivagangai District without initiating fresh proceeding as directed by this Court in WP(MD)No. 2168 of 2010, dated 12.02.2019.

For Petitioners	: Mr.D.Shanmugaraja Sethupathi
For R1 to R6	: Mr.D.S.Nedunchezian Government Advocate
For R7	: Mr.K.Kannan
For R8	: Mr.N.Karthick Kanna



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ORDER

The Writ Petition has been filed in the nature of Mandamus, seeking consideration of petitioner's representation, dated 20.01.2023 and seeking a negative relief to forbear the District Collector, Sivagangai District, the District Revenue Officer, Sivagangai District, the Revenue Divisional Officer, Sivagangai District, the Tahsildar, Kalayarkovil Taluk, Sivagangai District, the Assistant Director of Survey, Kalayarkovil Taluk, Sivagangai District, the Village Administrative Officer, Kurundhani Variyanenthal Group, Kalayarkovil Taluk, Sivagangai District/respondents 2 to 6, from surveying and issuing revised patta, in respect of the lands in S.Nos. 167/5H, 167/5K, 167/5I and 167/5G, at Porupanenthal Village, Kurundhani Variyanenthal Group, Kalayarkovil Taluk, Sivagangai District, without initiating fresh proceeding as directed by this Court in WP(MD)No. 2168 of 2010, dated 12.02.2019.

2.In WP(MD)No.2168 of 2010, a learned Single Judge of this Court by order, dated 12.02.2019 had quashed the proceeding issued by the District Revenue Officer, Sivagangai, dated 16.10.2008, in Pa.Mu.Pi. 4.33667/08, by which, the District Revenue Officer had directed the Tahsildar,

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Sivagangai to survey the lands in S.No.167/5G, 167/5H, 167/5I, after examining the sale deeds, from those who are in possession and examine the schedule of lands in said sale deeds and thereafter, identifying the vaikal and also comparing the same with the name of the pattadhar.

3.WP(MD)No.2168 of 2010 had been filed by the third writ petitioner herein. The learned Single Judge has set aside the particular direction of the District Revenue Officer, Sivagangai, dated 16.10.2008. However, liberty was given to the first respondent to initiate fresh proceedings, for revising the patta, which was earlier issued in favour of the petitioner, in accordance with law and by giving sufficient opportunity to the petitioner, including the right of personal hearing before passing any final order.

4.It appears that with respect to the aforementioned lands, there were also civil suits filed by the writ petitioners herein. A suit in O.S.No.133 of 2008 was filed by one Ariyamuthu, who is none other than the father of the petitioner, against P.Shanmugam and N.Muthuchamy, who are the seventh and eighth respondents herein, before the District Munsif Court, Sivagangai,



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seeking to declare that the suit property belongs to the plaintiff and to grant permanent injunction by restraining the defendants from interfering with the peaceful possession of the plaintiff in the suit property. After full trial, that suit was dismissed with cost. Perusal of the lands involved in the said suit reveal that the suit property was comprised in UDR Patta No.137 in S.No. 167/5H, 167/5K.

5. There was yet another suit in O.S.No.135 of 2008, filed by the third and fourth petitioners herein N.Chitravelu and Murugesan, against four defendants, of whom, the third and fourth defendants are the seventh and eighth respondents herein. That suit had been filed seeking permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiff in the first and second item of suit property. After full trial, that suit was dismissed with a specific finding that the plaintiffs are not entitled for any relief. The suit property involved in that suit was comprised in UDR Patta No.655 in S.No.167/5G.

6. Thereafter, first appeals were filed by the writ petitioners in A.S.No.57 of 2009 and A.S.No.90 of 2009. Both came up independently



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before Sub Court, Sivagangai and by Judgment, dated 08.03.2012, both appeal suits were dismissed.

7. The writ petitioners cannot claim that the survey should not be conducted over the lands, since the Civil Court had rendered a definite finding, the Judgments had attained its finality.

8.The eighth respondent has also filed a petition in WP(MD)No. 2128 of 2021. That writ petition was allowed with a direction to conduct survey, with respect to lands in S.No.167/5G.

9.The examination of all the above facts would indicate the following:

- 1. The writ petitioners had filed a writ petition in WP(MD)No. 2128 of 2010, to set aside the order of District Revenue Officer.*
- 2. In that writ petition, the order of District Revenue Officer was set aside, granting liberty to the District Revenue Officer to initiate fresh proceedings, by giving sufficient opportunity.*



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3. *The writ petitioners, either by themselves or through other individuals, acting under them had filed two suits seeking declaration and injunction. Those suits were dismissed.*
4. *Consequently first appeals filed by the writ petitioners were also dismissed.*
5. *The eighth respondent has also filed a writ petition in WP(MD)No.21128 of 2021, seeking to conduct survey and an order was issued to conduct survey.*

10. Therefore, the net result is that survey must be conducted. Now the issue is for which lands survey must be done. They are the lands in S.Nos.167/5G, 167/5H, 167/5I.

11. Let me go back to the order of the District Revenue Officer, Sivagangai, dated 16.10.2009. Though it had been set aside, it does not mean that he has no right to conduct survey. It was only held that he had not followed the procedure in accordance with law. The learned Single Judge had given liberty to initiate fresh proceedings, after following due procedure. In the order of the District Revenue Officer, he had directed survey of the lands in Patta No.167/5G, 167/5H, 167/5I and to determine the encroachments in the water channel in the said village. It is trite in law to point out that a water



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channel must be cleared from all encroachments and made available for the benefit of all the villagers and should not be for the exclusive usage of a particular person.

12.In view of the above facts, a direction is given to the second respondent to conduct a survey, after issuing notice to all parties concerned. The said exercise should be completed within a period of twelve weeks from the date of receipt of a copy of this order.

13.Accordingly, this writ petition stands dismissed. Consequently, the interim injunction already granted by this Court in WMP(MD)No.1688 of 2023, is vacated and WMP(MD)No.4239 of 2023 is allowed. No costs.

29.03.2023

NCS : Yes/No
Index : Yes / No
Internet: Yes/ No
PNM



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