



W.P(MD)No.8308 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.8308 of 2022

and

W.M.P(MD) No.8236 of 2022

S.Ramesh Kumar

... Petitioner

Vs.

1.The Thasildar
Taluk Office,
Paramakudi,
Ramanathapuram District.

2.The Commissioner,
Paramakudi Municipality,
Paramakudi,
Ramanathapuram District.

3.The Town Surveyor,
Paramakudi Municipality,
Paramakudi,
Ramanathapuram District.

4.C.P.Krishnan

... Respondents

(R4 is impleaded vide order of this Court, dated 16.03.2023
made in W.M.P(MD)No.8236 of 2022)



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PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the Respondents to Survey the lands in to an total extent of 4061 Sq.feet (2 Plots) in Survey No.260/2B, to an extent of 1255-1/2 Sq. Feet in Survey No.260/3 and to an extent of 1255-1/2 Sq.Feet in S.No.260/3 in Emaneswaram Village Paramakudi Taluk, Ramanathapuram District, on the basis of charges paid by the Petitioner on 05.01.2022 .

For Petitioner : Mr.D.Senthil

For Respondents : Mr.N.Muthu Vijayan - for R1
Special Government Pleader
Mr.M.Kannan - for R2 & R3
Mr.V.P.Rajan - for R4

ORDER

The writ petition has been filed in the nature of a Mandamus seeking a direction against the respondents/ the Tahsildar, Paramakudi, Ramanathapuram District, the Commissioner, Paramakudi Municipality, and the Town Surveyor of Paramakudi Municipality, to survey the lands



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measuring a total extent of 4061 sq.ft. (2 plots) in Survey No.260/2B measuring 1255-1/2 sq.ft. in Survey No.260/3 and measuring 1255-1/2 sq.ft. in Survey No.260/3 in Emaneswaram Village, Paramakudi Taluk, Ramanathapuram District. The petitioner had made necessary application and also paid charges for such survey on 05.01.2022.

2. While the writ was pending, application in W.M.P(MD) No.8236 of 2022 had been filed seeking to implead the petitioner therein as a fourth respondent in the writ petition.

3. It is stated by the learned counsel that the petitioner in W.M.P(MD) No.8236 of 2022 had filed a suit in O.S.No.5 of 2022 which is now pending before the District Munsif Court, Paramakudi. In that suit, the writ petitioner had now been impleaded as a further defendant. Originally his mother and other family members were already shown as defendants. That suit had been filed seeking injunction and protection of usage of a pathway claimed as a right by the plaintiff therein. The writ petitioner is a neighbouring owner.



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4. In that suit also, the writ petitioner had filed an application seeking survey and measurement of the pathway. It is stated that a Commissioner had been appointed to do the needful, but the actual measurements could not be done.

5. The learned Special Government Pleader, who appears for first respondent namely, Tahsildar, had forwarded instructions, wherein, it is stated that as directed by the District Munsif Court, Paramakudi, in O.S.No.5 of 2022 in the presence of the Advocate Commissioner survey had commenced, but could not be completed.

6. Let the particular exercise be commenced and report be filed before the jurisdictional civil Court. If further survey is to be done, the plaintiff or the defendants can file further application and I am confident that it would be taken up and decided on merits.

7. The writ Court will only be passing similar orders and there is always a danger that inconsistent orders would be passed by both the District Munsif and by this Court. Therefore, no orders are passed



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directing survey I would relegate the issue to the District Munsif Court, Paramakudi, wherein, O.S.No.5 of 2022 is pending and both the writ petitioner and the petitioner in W.M.P.(MD) No.8236 of 2022 are parties. Let applications be filed and let necessary orders be obtained from that particular Court.

8. The learned counsel for the writ petitioner states that the suit only relates to the pathway and not to the property of the petitioner herein. Both the issues are aligned. The plaintiff therein, seeks protection of the usage of the pathway. If that is to be granted then naturally the property of the writ petitioner will also have to be delineated away from the pathway and it has to be examined whether the petitioner has encroached on the pathway or not encroached on the pathway. Therefore, simultaneously when pathway is measured it is only appropriate that examination is also done about the property of the writ petitioner herein.

9. It is informed that such an application has already been filed. Therefore necessary orders may be passed by the District Munsif.



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Therefore, a direction given by this Court would only be superfluous in nature.

10. The writ petition is disposed of, directing the parties to go back to the District Munsif Court, and obtain necessary orders. No costs.

11. In view of the nature of the order passed in the writ petition, W.M.P(MD) No.8236 of 2022 is allowed.

12. Registry before issuing the order copy, may implead the petitioner in WMP(MD) No.8236 of 2022 as fourth respondent in the writ petition.

16.03.2023

Index :Yes/No
Internet :Yes/No
NCC : Yes / No

RM



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To
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- 2.The Commissioner,
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C.V.KARTHIKEYAN, J.

RM

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