



W.P.(MD) No.14915 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

W.P.(MD) No.14915 of 2021

and

W.M.P.(MD) No.11809 of 2021

Manuel Jeyaraj

.. Petitioner

Vs.

- 1.The District Collector,
Madurai District,
Madurai.
- 2.The Assistant Director,
Survey and Land Records,
Collectorate Complex,
Madurai.
- 3.The Tahsildar,
Madurai North Taluk,
Madurai.
- 4.The Inspector of Survey,
Madurai North Taluk,
Madurai.
- 5.The Firka Surveyor,
Sathamangalam Circle,
Madurai North Taluk, Madurai.



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6.The Town Surveyor,
Madurai City Municipal Corporation,
Madurai.

7.The Inspector of Police (Law and Order),
Koodalpudur Police Station,
Madurai.

8.Johnson Thomas

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue Writ of mandamus directing the 4th respondent herein to measure the lands in Survey No.116/2H measuring 1 acre 30 cents situated at Vilangudi II Bit Village, Madurai North Taluk, Madurai District in pursuant to the fee paid by the petitioner to the 3rd respondent dated 15.07.2021 by providing adequate police protection by the 7th respondent and consequently directing the 4th respondent to consider the representation dated 14.08.2021.

For Petitioner	:	Mr.Arjun Jayatram
For RR1 to 5	:	Mr.B.Saravanan Additional Government Pleader
For R6	:	Mr.K.Govindaraj Standing Counsel
For R7	:	Mr.B.Sivakumar Government Advocate (Crl. Side)
For R8	:	Mr.J.Barathan



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ORDER

When the matter came up for hearing on 28.10.2022, this Court passed the following order:

“The case of the petitioner is that himself and his family members purchased the following properties situated at Vilangudi II Bit Village, Madurai North Taluk, Madurai through registered sale deed in the year 2005.

S.No.	Survey No.	Name	Extent	Patta No.
1.	116/2H	S.Manuel Jayaraj	1.30 acres	843
2.	116/2I 116/2E	M.Grace Hepize M.Grace Hepize	0.64 acres	840
3.	116/2G	M.Esaw Kirubaraj	0.71.5 acres	842
4.	116/2F	Davidson Jebakumar	0.80 acres	841

2. The 8th respondent has also purchased property in Survey No.116/1A2 to an extent of 1 acre 16 cents in the year 2005. The said property is situated on the western side of the petitioner's property. The 8th respondent is making an attempt to encroach the petitioner's property and put up a compound wall. The petitioner also made a request dated 15.07.2021 to the third respondent to survey and demarcate the boundaries. The petitioner and his wife and sons also paid prescribed fee for surveying the land. In the



meantime, the 8th respondent is making arrangements to survey the land through 6th respondent. The 6th respondent issued notice in Na.Ka.No.Mathi 1/010128/21 dated 12.07.2021 that he is going to survey the land in Survey No.116/2A2 on 17.07.2021. In pursuant to the said notice, the petitioner herein appeared for survey on 17.07.2021 and knowing the fact that the notice was issued by one Jeyaraman who is not a Town Surveyor and he is a retired employee working on consolidated pay in the Madurai Corporation. But without perusing the documents owned by the petitioner and his family members and other adjacent owners property, the said Jeyaraman measured only the 8th respondent property and marked inside the petitioner's property. In pursuant to the same, the 8th respondent is taking advantage as if the land was surveyed and attempted to construct of a wall in the petitioner's property. The petitioner further claims that the 8th respondent herein having men and muscle power made an attempt to construct the compound wall and that was restrained by the petitioner and further the fifth respondent vide proceedings FL No.402/2021 dated 09.08.2021 issued notice to the petitioner and others that they are going to survey the property on 12.08.2021. On that day the 5th



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respondent surveyed the land of the petitioner's wife and their sons and not surveyed the land of the petitioner due to the non-co-operation of the 8th respondent and he claimed that survey was already conducted by Jeyaraman, who claimed to be the Town Surveyor of the Madurai Corporation. But as per the act he is mandatory. Therefore, the petitioner has given a representation to the fourth respondent, dated 14.08.2021 to measure the lands in Survey No.116/2H measuring 1 acre 30 cents situated at Vilangudi II Bit Village, Madurai North Taluk, Madurai District.

3. The 8th respondent has filed counter affidavit. Mr.J.Barathan, learned counsel appearing for the 8th respondent would submit that except those, that are expressly admitted in this counter affidavit, all the allegations in the affidavit filed in support of the writ petition are denied by me as false, incorrect and unsustainable. He would submit that the writ petition is totally a misconceived one. The petitioner had converted a plaint to be filed before a civil court into a affidavit and has filed the writ petition under article 226 of the Constitution of India.

4. The property in UDR Survey No. 116 / 2, Old Resurvey No. 292/2, Vilankudi Second Bit Village, Madurai North Taluk, Madurai District measuring 1



Acre 16 Cents was purchased by the 8th respondent and his three brothers jointly through a registered sale deed, dated 14/09/2005 for a sale consideration of Rs. 3,48,000/- (Rupees Three Lakhs and Forty Eight Thousand only). The said sale deed had been registered as Document No. 1785 of 2005 on the file of the Joint Sub Registrar, Madurai North.

5. Later, he and his brothers had partitioned the subject property and other properties through a registered partition deed dated 10/10/2019. Under the said partition deed, the subject property had been allotted to the 8th respondent as item 18 of 'C' schedule. The said partition deed had been registered as Document No. 3494 of 2019 on the file of the Sub Registrar, Vathalakundu. The Tahsildar, Madurai North Taluk had measured and subdivided the subject property as Survey No. 116 / 2A2 measuring 0.47.00 Hectares and issued Patta No. 903 for the subject property. He had also paid kist for the same. I am in peaceful possession and enjoyment of the subject property till date.

6. The petitioner, his wife, Grace Hepsie and sons, Davidson Jebakumar and Esaw Kirubaraj are owners of neighbouring properties. He further submit that the petitioner, his wife and sons had purchased



their respective properties only after the 8th respondent purchased his property. In other words, the sale deeds in favour of the petitioner, his wife and sons are subsequent to the sale deed in favour of himself and his brothers. Moreover, the petitioner had attested the sale deed dated 14.09,2005 in their favour. Even at that time, the petitioner facilitated for measuring the property and after verifying the measurements and extents, himself and his brothers had purchased the same.

7. The 8th respondent would submit that the entire property measuring 18.21.0 Hectares equivalent to 45 Acres in UDR Survey No. 116 / 2, Old Resurvey No. 292 / 2, Vilankudi Second Bit Village, originally belonged to R.M. Sethuraman Chettiar and others through a registered sale deed dated 06/02/1978 registered as Document No. 164 of 1978 on the file of the Sub Registrar, Pudumandapam, Madurai. The petitioner entered into a sale agreement dated 07/11/2004 to purchase the said property.

8. At the instance of the petitioner, the entire property was purchased in portions by different persons. The property measuring 44.8 Cents out of 45 Acres equivalent to 18.21.0 Hectares in UDR Survey No. 116 / 2, Resurvey No. 292 / 2, now in present



Survey No. 116 / 20, Vilankudi Second Bit Village, Madurai North Taluk, Madurai District was purchased by Alagurajan and Premalatha through a registered sale deed dated 20/10/2005 registered as Document No. 2002 of 2005. The petitioner had attested the said sale deed and thus, he is very well aware about the contents of the said document.

9. He further submit that the wife of the petitioner, namely, Grace Hepsie had purchased the property measuring 65 ¹/₂ Cents out of 45 Acres equivalent to 18.21.0 Hectares in UDR Survey No. 116 /2, Resurvey No. 292 / 2, Vilangudi Second Bit Village, Madurai North Taluk, Madurai District through a registered sale deed dated 20/10/2005 registered as Document No.2003 of 2005. The petitioner had attested the said sale deed and thus,he is very well aware about the contents of the said document.

10. He would submit that the petitioner has purchased the property measuring 1 Acre 30 Cents out 45 Acres equivalent to 18.21.0 Hectares in UDR Survey No. 116/2, Resurvey No. 292 / 2, Vilankudi Second Bit Village, Madurai North Taluk, Madurai District through a registered sale deed dated 20/10/2005 registered as Document No. 2007 of 2005. The petitioner, namely, Esaw Kirubaraj has purchased the property measuring



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71 1/2 Cents out of 45 Acres equivalent to 18.21.0 Hectares in UDR Survey No. 116 / 2, Resurvey No. 292 / 2, Vilankudi Second Bit Village, Madurai North Taluk, Madurai District through a registered sale deed dated 20/10/2005 registered as Document No. 2009 of 2005. The petitioner had attested the said sale deed and thus, he is very well aware about the contents of the said document

11. One Mariappan, son of Arumugam has purchased the property measuring 34 Cents out of 45 Acres equivalent to 18.21.0 Hectares in UDR Survey No. 116 / 2, Resurvey No. 292 / 2, Vilankudi Second Bit Village, Madurai North Taluk, Madurai District through a registered sale deed dated 20/10/2005 registered as Document No. 2010 of 2005. The petitioner had attested the said sale deed and thus, he is very well aware about the contents of the said document. The petitioner had also executed a registered public road gift deed dated 06/02/2008 registered as Document No. 458 of 2008 in favour of the Executive Officer of the Vilankudi Town Panchayat, Madurai North Taluk. He had also executed another registered public road gift deed dated 19/02/2008 registered as Document No. 959 of 2008 in favour of the Executive Officer of the Vilankudi Town Panchayat, Madurai North Taluk.



12. *The son of the petitioner, Davidson Jebakumar had executed a registered sale deed dated, 27/08/2021 registered as Document No. 3046 of 2021 in favour of Ganesan and Chitra conveying 25.076 Cents out of 45 Acres equivalent to 18.21.0 Hectares in UDR Survey No. 116/2, Resurvey No. 292 / 2, Vilankudi Second Bit Village, Madurai North Taluk, Madurai District. The petitioner had attested the said sale deed and thus, he is very well aware about the contents of the said document.*

13. *The son of the petitioner, Davidson Jebakumar had executed a registered sale deed dated 27/08/2021 registered as Document No. 3047 of 2021 in favour of Radhakrishnan and Pandiarajan conveying 12.235 Cents out of 45 Acres equivalent to 18.21.0 Hectares in UDR Survey No. 116 / 2, Resurvey No. 292 / 2, Vilankudi Second Bit Village, Madurai North Taluk, Madurai District. The petitioner had attested the said sale deed and thus, he is very well aware about the content of the said document.*

14. *He would submit that the petitioner, his wife and sons were trying to claim that the boundary line between my property and their adjacent properties is wrong. So. He gave an application to the Tahsildar, Madurai North Taluk on 21/10/2020 for measuring the*



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subject properties. The 8th respondent had also paid necessary fees to the Sub Treasury. But, the petitioner, his wife and son did not cooperate for measuring the properties. They had influenced the revenue officials for not measuring the subject properties. Moreover, the revenue officials informed me that the subject properties are situated within the territorial jurisdiction of Madurai City Municipal Corporation and hence, the survey has to be conducted by the Town Surveyor with reference to the town survey sketch. In fact, the entire area had been thickly inhabited and a lot of buildings had been constructed. So, there is no chance of finding the survey stone fixed by the Revenue Department about 35 years ago during UDR survey.

15. So, the 8th respondent gave another application to the Commissioner of Madurai Corporation on 06/07/2021 for measuring the subject properties. He also paid the necessary fees. The Town Surveyor also issued notice dated 12/07/2021 to him as well as the petitioner, his wife and sons proposing to measure the subject properties on 17/07/2021. The petitioner wanted to stall the survey work by any means. So, after the Town Surveyor issued notice of survey fixing the date of survey as 17/10/2021, the petitioner, his wife and sons seems to have submitted



a similar petition for survey to the Tahsildar, Madurai North Taluk.

16. The 8th respondent advised to state that west of the subject properties, a north to south road runs. The said road is vested with the Madurai City Municipal Corporation. The boundaries of the said road are intact and it cannot be altered or shifted. East of the said road, the property in Survey No. 116 / 20 is situated. The east to west measurement of Survey No. 116 / 20 is 30 meters. East of Survey No. 116 / 20, my property in Survey No. 116 / 2A2 is situated. The east to west measurement of his property is 24.4 meters. Thus, the east to west measurement of his property can be easily identified and fixed.

17. The properties of the petitioner, his wife and sons are situated in Survey Nos. 116 / 2E, 116 / 2F, 116 / 2G and 116 / 21-1. All those properties are situated east of my property. He submitted that he had purchased only 1 Acre 16 Cents whereas, the petitioner, his wife and sons had purchased a total extent of 3 Acres 47 Cents. Now, the petitioner, his wife and sons claims that there is deficiency in the extent and measurements of the properties purchased by them.

18. In view of the above, this Court is inclined to appoint an Advocate Commissioner. Accordingly,



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Mr.V.Chandrapandi, Advocate [Enrollment No.838 of 2016, Law Chamber 54, Madurai Bench of Madras High Court, Madurai. [Mobile No.86081 71501], is appointed as an Advocate Commissioner to visit and measure the disputed land with the help of the Head Surveyor, Madurai Corporation. The 7th respondent shall give police protection at the time of surveying the land.

19.The Advocate Commissioner shall inspect the suit property with the assistance of the Head Surveyor, Madurai Corporation, after issuing notice to all the parties and their respective counsel by fixing the date and time of inspection of the suit property on or before 22.11.2022. The Advocate Commissioner fee is fixed at Rs.25,000/- (Rupees Twenty Five Thousand only) payable by the petitioner only, hence the petitioner is directed to pay the said fee to the Advocate Commissioner, within a week from the date of receipt of this order. Apart from that, the petitioner shall also arrange for the conveyance and other incidental expenses. The report of the Advocate Commissioner shall also contain ingress and egress related to the suit property.

20. The Advocate Commissioner, after measuring the property, shall file her report along with a sketch



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and photographs, if any, before this Court on or before 22.11.2022.

21. Post the matter on 22.11.2022.”

2. Pursuant to the above order, the learned Advocate Commissioner conducted inspection and has also filed a report before this Court. A copy of the report has also been served on the learned counsel for the petitioner and the learned counsel appearing on behalf of the 8th respondent. The report is accompanied by sketch and photographs. The relevant portions in the report are extracted hereunder:

“I further humbly submits that thereafter after due notice to all the respondent and the petitioner counsel the commission was conducted on 09.12.2023 with the presence of all the parties and the survey was conducted by the official by the officials as follows:-

Commission started at 11.30 Am and the measurement was starts from the south west portion of the property where the byjunction stone was available in S/No.115, from there B junction (S/No.116) was reached after 178.5 Mtrs, from there offset point was reached by 58.8 Mtrs, from the offset point there was a 40ft Road at 28Mtrs, while measuring the while measuring the adjoining property of the disputed



property i.e. S/No.116/D, 116/2A2, 116/2E, 116/F the measurement stated in the revenue record was available in the property and the petitioner was admitted the same, but the property in survey No.116/2G the measurement stated in the revenue record is 51.2 Mtrs but only 44mtrs was available there and there is a deficiency of 7.2mtrs in the northern portion of the property in S/No.116/2G and it was available at the river bed nearer to the property.

From there the revenue officials stated that some portions of property in S/No. 116/2G and 116/2I is under the custody of PWD department and the actual measurement stated in the revenue record is not available in the field due to river flood this portions may drop in to the river and they can't go in to the jurisdiction PWD to measure the property

I further humbly submit that thereafter while measuring the subject property of S/No. 116/2H the following measurement was available:-

North-89 Mtrs,

West-76.4 Mtrs,

South-48.8 Mtrs.

East-27.4 Mtrs.

And the total extent available in S/No.116/2H is 0.43.0 Ares (1 acre and 7 cents) as mentioned in the revenue



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record and the petitioner was also admitted the same but stated in the writ petition as 1 acre 30 cents.”

3. In the considered view of this Court, the private dispute between the petitioner and the 8th respondent is now attempted to be ventilated in this writ petition. This Court wanted to ascertain the claim made by the petitioner and the 8th respondent and accordingly, the Advocate Commissioner was appointed and he has also filed his report. In view of the same, whatever relief was sought for by the petitioner stands fulfilled, since the property has been surveyed in the presence of the parties. Hence, no further orders can be passed in this writ petition. If the petitioner or the 8th respondent have any further grievance, they should work out their remedy only before the competent civil Court. Except giving this liberty, no further orders can be passed in this writ petition.

4. This Writ Petition is disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

21.12.2023

NCC : Yes/No
Index : Yes/No
ABR



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To

- 1.The District Collector,
Madurai District,
Madurai.
- 2.The Assistant Director,
Survey and Land Records,
Collectorate Complex,
Madurai.
- 3.The Tahsildar,
Madurai North Taluk,
Madurai.
- 4.The Inspector of Survey,
Madurai North Taluk,
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N. ANAND VENKATESH, J.

ABR

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