



W.P.(MD)No.16211 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 07.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.16211 of 2021

and

W.M.P.(MD)No.13096 of 2021

M.Murugesan

... Petitioner

Vs.

1.The District Collector,
Sivagangai District.

2.The District Revenue Officer,
Sivagangai District.

3.The Tahsildar,
Usilankulam,
Sivagangai District.

4.The Revenue Inspector,
Kalayarkovil,
Sivagangai District.

...Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, to forbear the respondents from dispossessing the petitioner from alleged encroachment in Sy.No.77 of A.Karunakulam Village till the finalization of proceedings in B4/14883/2021 dated 13.05.2021 on the file of the second respondent on consonance with the above order.



W.P.(MD)No.16211 of 2021

For Petitioner : Mr.K.P.Narayanakumar
For Respondent : Mr.A.K.Manikkam
Special Government Pleader

ORDER

This writ petition has been filed for the issue of writ of mandamus forbearing the respondents from dispossessing the petitioner from the subject property till the finalization of the proceedings pending before the second respondent, wherein the petitioner has sought for rectification of UDR.

2.The case of the petitioner is that he is undertaking agricultural activities in the subject property and he is having mango groves and other fruit yielding plants and trees. While so, a notice was issued in the year 2014 by the Revenue Department alleging that the petitioner has encroached upon Survey No.77 to an extent of 2.52 ½ acres. On receipt of the same, the petitioner also gave his reply. Thereafter, all issues were resolved. The further case of the petitioner is that there was a mistake committed during UDR Scheme and the same requires rectification, since an extent of 1.10 acres belonging to the petitioner has been left out from the property in Survey No.73/2 and 76.

3.According to the petitioner, he has not made any encroachment and taking advantage of the mistake that was committed during UDR, an attempt is



W.P.(MD)No.16211 of 2021

being made to project as if the petitioner has encroached upon Survey No.77 to an extent of 1 acre and 10 cents. Notice was also issued under Section 7 of the Land Encroachment Act (hereinafter referred to as 'the Act' for the sake of brevity) and the petitioner also gave his reply for the same. The petitioner also submitted an application before the second respondent, dated 13.05.2021 seeking for rectification of the mistake that had happened during UDR and the same was pending.

4.The grievance of the petitioner is that without issuing notice under Section 6 of the Act and even without dealing with the application submitted by the petitioner for carrying out the rectification, hasty steps were taken to disturb the physical possession and enjoyment of the property in Survey No.77. It is in these circumstances, the present writ petition came to be filed before this Court.

5.When the matter is taken up for hearing, the learned Special Government Pleader based on the written instructions received from the third respondent, submitted that the encroachment was removed with the police help on 31.08.2021, since the property in survey No.77 has been categorized as water body and therefore, nothing survives to be considered in this writ petition.



W.P.(MD)No.16211 of 2021

6.This Court has carefully considered the submissions made on either side and the materials placed on record.

7.The petitioner can sustain his right with respect to the property, only if the application submitted by the petitioner pending before the second respondent is considered and orders are passed. In the said application, the petitioner has claimed that an extent of 1.10 acres was left out from Survey No. 73/2 and 76 and it was added by mistake to Survey No.77. Till this dispute is resolved, the revenue officials will consider the property to an extent of 1.10 acres which now falls under Survey No.77, only to be a water body. In view of the same, it will be more appropriate to direct the second respondent to deal with the application submitted by the petitioner on 13.05.2021 seeking for rectification of the mistake that had crept during UDR. It is not necessary for this Court to go into the relief sought for in the present writ petition, since the respondents have taken a stand that the encroachment had already been removed.

8.In light of the above discussions, there shall be a direction to the second respondent to deal with the application submitted by the petitioner on 13.05.2021 on its own merits and in accordance with law after affording opportunity to the petitioner. The second respondent shall pass orders within a



W.P.(MD)No.16211 of 2021

period of three months from the date of receipt of a copy of this order. The petitioner is directed to make a fresh representation to the second respondent along with all the relevant documents and also a copy of this order. It is also made clear that the petitioner can work out his remedy independently with respect to claiming damages for the removal of encroachment that has already taken place.

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

07.11.2023

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

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W.P.(MD)No.16211 of 2021



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W.P.(MD)No.16211 of 2021

N.ANAND VENKATESH, J.

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W.P.(MD)No.16211 of 2021

07.11.2023