



W.P(MD)No.22962 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.08.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.22962 of 2015

P.Durai Raj

... Petitioner

Vs

1.The District Collector,
Kanyakumari District,
Nagercoil.

2.The Tahsildar,
Agasteeswaram Taluk,
Kanyakumari District.

3.C.Rajendran

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to measure and fix the boundary of the petitioner's property in S.No.399/5 in an extent of 18 1/2 cents in Neendakarai B Village, Agateeswaram Taluk, Kanyakumari District.

For Petitioner : Mr.J.Selvakumaran



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For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader
for R.1 & R.2

Mr.C.K.M.Apsi for R.3

ORDER

Heard the learned counsel on either side.

2. The petitioner wants the jurisdictional Tahsildar to survey, measure and fix the petition mentioned property comprised in Survey No.399/5. According to the petitioner, the property purchased by him measures 18 ½ cents. The stand of the official respondents as well as that of the private respondent is that one Rayappan Fernando owned and possessed 25 cents of land and he sold the same in two parcels vide sale deeds bearing Document Nos.1094/1991 and 1095/1991. In Document No. 1094/91, the said Rayappan Fernando sold 10 cents of land in favour of one Rathnamani who is none other than the brother of the third respondent. The learned Additional Government Pleader wonders as to how Rayappan Fernando could have sold 18 ½ cents of land in favour of the petitioner after selling 10 cents of land. According to the respondents, the petitioner could have purchased only 15 cents of land as that alone was the remaining extent.



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3. I do not want to go into the factual controversies at present. The petitioner is permitted to submit a fresh application of survey and measurement before the second respondent. The second respondent will consider if the application is in order. Thereafter, the application shall be disposed of in the following terms:

(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



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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.



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The entire exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

4. This writ petition is disposed of accordingly. There shall be no order as to costs.

25.08.2023

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

To

1.The District Collector,
Kanyakumari District,
Nagercoil.

2.The Tahsildar,
Agasteeswaram Taluk,
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G.R.SWAMINATHAN, J.

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