BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2023

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.P(MD)No.5166 of 2015

Vijithra ... Petitioner

**Vs.**

1.The District Collector,
Kanyakumari District,
At Nagercoil.

2.The Tahsildar,
Vilavankodu Taluk,
Kanyakumari District.

3.The President,
Pynkulam Village Panchayat,
Kanyakumari District.

4.P.Sekar

5.A.Eramiya ... Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the third respondent to cancel tax assessment issued in favour of the fourth respondent for the shed situated in Re-Survey No.2/10A, Pynkulam Village, Vilavancode Taluk, Kanyakumari District and consequently, direct the third respondent to issue tax assessment in favour of the petitioner for the shed situated in Re-survey No. 2/10A, of Pynkulam Village, Vilavancode Taluk.

For Petitioners : Mr.V.Sasikumar

For Respondents : Mr.D.Gandhiraj
Special Government Pleader for R1 to R3

: no appearance for R4 & R5

**ORDER**

Heard the learned counsel on either side.

2. When the matter was taken up for hearing on 10.03.2023, the following order was passed:-

> "This writ petition is filed for a Mandamus, directing the 3rd respondent, namely, the President, Pynkulam Village Panchayat, Kanyakumari District, to cancel tax assessment issued in favour of the 4th respondent for the shed situated in Re-Survey No.2/10A, Pynkulam Village, Vilavancode Taluk, Kanyakumari District and consequently, direct the 3rd respondent to issue tax assessment in favour of the petitioner for the shed situated in Re-Survey No.2/10A, Pynkulam Village, Vilavancode Taluk, Kanyakumari District.
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> 2. The learned counsel appearing for the petitioner submits that the petitioner has purchased a land in Survey No.2/10A, measuring to an extent of 13 cents, situated at Pynkulam Village, Vilavancode Taluk, Kanyakumari District, from one Sathyaseelan, by a registered sale deed No.1507/2012, on 23.05.2012. However, the $4^{th}$ respondent, who is having a land to an

extent of 0.01.5 ares in Re-Survey No.2/10B, has put up a construction in Survey No.2/10A and also obtained tax assessment from the 3rd respondent. The petitioner has also approached the Taluk Surveyor by paying necessary amount for surveying the property and survey was also conducted by the Frika Surveyor in the presence of the 4th respondent on 09.04.2014 and the Frika Surveyor has found that the 4th respondent has encroached the property of the petitioner in Survey No.2/10A and put up a wall to some extent. The Frika Surveyor has also stated in his report that a portion of the property in Survey No.2/10B is classified as a pathway and road in revenue records. Based on the Frika Surveyor's report, the petitioner has filed this writ petition to cancel the tax assessment issued in the name of the 4th respondent.

3. The learned counsel appearing for the petitioner further submits that after objections raised by the petitioner, the 4th respondent has created records in favour of the 5th respondent by a registered sale deed dated 12.12.2015 as Document No.35/2015 and transferred the property in favour of the 5th respondent.

4. Though notice was served on the 4th and 5th respondents, there is no representation on behalf of them either in person or through a counsel.

5. The 3rd respondent has filed a counter affidavit stating that the 4th respondent is having a land in Survey No.2/10B to an extent of 3 cents 750 links, for which, he has produced patta and settlement deed in the name of the 4th respondent, based on those documents, tax assessment was levied in the name of the 4th respondent.

6. When this Court raised a query to the learned Additional Government Pleader as to the report of the Frika Surveyor dated 09.04.2014, she expressed her difficulty in getting instructions from the 3rd respondent, namely, the President, Pynkulam Village Panchayat, Kanyakumari District that he has refused to give response stating that he has already filed a counter affidavit in this writ petition.

7. Considering the attitude of the 3rd respondent in not furnishing

the case details to the learned Additional Government Pleader, this Courts directs the first respondent, namely, the District Collector, Kanyakumari District at Nagercoil, to conduct an enquiry with regard to the grant of tax assessment in the name of the $4^{th}$ respondent without considering the Frika Surveyor's report dated 09.04.2014 and file his report before this Court on **20.03.2023**. During the enquiry, if it is found that a fraud has been committed by the $3^{rd}$ respondent, namely, the President, Pynkulam Village Panchayat, the District Collector shall take appropriate action against him under Section 205 of the Panchayat Act."

Pursuant to the aforesaid direction, the District Collector, Kanyakumari has issued the proceedings dated 08.09.2023. Copy of the proceedings has been made available. The tax assessment made in respect of the petition mentioned premises in favour of the fourth respondent has been cancelled.

3. Mrs.Premalatha, Deputy Block Development Officer IV, Munchirai Panchayat Union, Kanniyakumari District is present in person. She informs the Court that assessment henceforth will be made in the name of the petitioner.

4. The Writ Petition is allowed on these terms. No costs.

**21.09.2023**

Index : Yes / No
Internet : Yes/ No
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**G.R.SWAMINATHAN, J.**

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