



W.P.(MD) No.10825 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :12.04.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.(MD)No.10825 of 2016

and

W.M.P.(MD) No.8397 of 2016

Sahayaraj

... Petitioner

Vs.

1. The District Collector,
Nagercoil, Kanyakumari District.

2. The Tahsildar,
Agasteeswaram Taluk,
Kanyakumari District.

3. The Village Administrative Officer,
Agasteeswaram Village,
Kanniyakumari District.

4. Vijayalakshmi Gopinath

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the impugned order vide Na.Ka.A4/2347/2016 dated 20.03.2016 passed by the



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2nd Respondent and to quash the same.

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For Petitioner : Mr.D.Saravanan
For Respondents : Mrs.D.Farjana Ghoushia
Special Government Pleader for R1 to R3
Mr.S.C.Herold Singh for R4

ORDER

The petitioner assails an order dated 20.03.2016 in relation to the survey of the property bearing Survey No.539/6B1 of an extent of 32.611 cents at Agasteeswaram Village, Kanyakumari District.

2. The petitioner asserts that the above mentioned property originally belonged to one Kishore. The said Kishore mortgaged the property as a security for the loan availed of by him from Vysya Bank Limited, Thiruvananthapuram Branch. On account of default in fulfilling the loan obligations, the bank instituted legal proceedings. In such proceedings, the property was brought for auction sale and the predecessor-in-title of the petitioner, Mrs.Leela Amma T.Joseph, purchased the property. Thereafter, the property was conveyed to the petitioner under registered sale deed bearing Document No.776/2003 on the file of the office of the



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Kottaram Sub Registrar. The petitioner further states that portions of the property were sold by him and that he also executed a settlement deed in respect of another portion thereof.

3. According to the petitioner, the fourth respondent has no right, title or interest over the property. She, however, requested the revenue officials to include her name in the revenue records and thereafter filed W.P. (MD) No.15772 of 2014 for survey of the land. By an order dated 22.09.2014, the writ petition was disposed of by directing the Tahsildar to consider her representation and dispose of the same after putting the adjacent land owners on notice and hearing them. The impugned order was issued pursuant thereto.

4. Learned counsel for the petitioner invited my attention to the decree passed in O.S.No.38 of 1984 and to the proceedings relating to the sale of the property through the court auction sale to the predecessor-in-title of the petitioner. Therefore, he submits that the official respondent should not have surveyed his land.

5. These contentions are refuted by learned counsel for the fourth respondent. Learned counsel submits that the relevant property was



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purchased by the fourth respondent from the original owner Kishore on 16.08.1981. Since the petitioner purchased it from the auction purchaser long after the purchase of the property by the fourth respondent, learned counsel submits that the petitioner should have undertaken due diligence and that the purchase is subject to the doctrine of *caveat emptor*.

6. Learned Special Government Pleader relies upon the counter filed by the Tahsildar and submits that the survey was undertaken pursuant to the order dated 22.09.2014 of this Court in W.P.(MD) No.15772 of 2014. Since there is a title dispute between the private parties, she submits that no further steps would be taken unless the contesting private parties come to an agreement or obtain orders from the jurisdictional civil court.

7. From the documents on record and the submissions made by learned counsel, it is evident that there is a dispute as between the petitioner and the fourth respondent with regard to title over the relevant property. While the petitioner asserts title on the basis that he purchased the property from the auction purchaser and that such auction purchaser purchased the property upon sale at the instance of the mortgagee, the fourth respondent asserts title on the basis of a sale deed executed by the original owner. The



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relevant mortgage deed is not placed before this Court and several disputed questions of fact arise. Such disputed questions of fact cannot be conveniently addressed in this proceeding. Therefore, the contesting private parties should approach the jurisdictional civil court in such regard.

8. For reasons set out above, W.P.(MD) No.10825 of 2016 is disposed of by directing respondents 1 to 3 not to take any further steps with regard to the survey of the relevant property unless the petitioner and the fourth respondent arrive at an agreement or obtain orders from the jurisdictional civil court. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

12.04.2023

NCC :No
Internet :Yes
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SENTHILKUMAR RAMAMOORTHY, J.

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