



W.P(MD)No.27911 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.01.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.27911 of 2022

and

W.M.P.(MD)Nos.21984 and 21985 of 2022

R.Kokkuthatty @ Seenivasan

... Petitioner

Vs.

1.The District Collector,
Madurai District,
Madurai.

2.The District Revenue Officer,
Madurai District, Madurai.

3.The Tahsildar,
Vadipatti Taluk,
Vadipatti,
Madurai District.

4.The Taluk Sub-Inspector (Land Survey),
Taluk Office, Vadipatti Taluk,
Vadipatti, Madurai District.

5.S.Chandran

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Certiorari, calling for the records



W.P(MD)No.27911 of 2022

pertaining to the impugned notice dated 22.11.2022 in FL No.955 of 2022 on the file of the 4th respondent and quash the same.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.A.K.Manikkam,
Spl. Government Pleader for R1 to R4.
No appearance for R5.

ORDER

Heard the learned counsel for the writ petitioner and the learned Special Government Pleader for the official respondents. Even though the fifth respondent has been served and his name is printed in the cause list and a learned counsel undertook to file vakalat, there was no representation for the fifth respondent on 19.01.2023. The matter has been posted again today (20.01.2023). Even today there is no representation on the side of the fifth respondent. In these circumstances, I have to take up the matter for disposal on merits based on the available records.

2.The writ petitioner challenges the impugned notice issued by the fourth respondent proposing to conduct survey of the petition mentioned lands. The notice has been issued at the instance of the fifth respondent. The learned Special Government Pleader is right in his contention that the authorities



W.P(MD)No.27911 of 2022

cannot be blamed because they have only acted pursuant to the direction given by this Court in W.P.(MD)No.24201 of 2022 on 20.10.2022. Paragraph No.3 of the said order reads as follows:-

“3. In view of the above, this Court directs the second respondent to survey the petitioner's property in S.No.982/14A to an extent of 19 ½ cents situated at Kachaikatti Village, Vadipatti Taluk, Madurai District, based on his representation, dated 11.10.2022.”

3.Since the said order is adverse to petitioner's interest, I originally wondered if the petitioner has to apply for review or file a third party writ appeal. The learned counsel for the petitioner drew my attention to the fact that in the earlier writ proceedings, the petitioner was not even made as party. If the petitioner had been made as party and due to some reasons, an order was passed without notice to him, then probably, the petitioner may have to apply for review or file a writ appeal. When the petitioner was not even made as party, according to the learned counsel for the petitioner, the said order ought not to be treated as binding on him.

4.I endorse the said contention advanced by the learned counsel for the writ petitioner. This is all the more so because the earlier order appears to have



W.P(MD)No.27911 of 2022

been obtained by suppression of material facts. The fifth respondent had earlier filed O.S.No.167 of 2014 on the file of District Munsif Court, Vadipatti. The writ petitioner figured as the first defendant in the said suit. The said suit was for the relief of declaration and recovery of possession. The said suit was dismissed on 18.01.2020. The petitioner has enclosed copy of the decree. It is seen therefrom that Item No.2 of the suit schedule pertains to Survey No.982/14. The learned counsel for the petitioner asserts that by suppressing the dismissal of the suit, the fifth respondent had obtained an order for conducting survey in the earlier writ proceedings.

5.In these circumstances, I have to necessarily hold that the earlier passed by this Court is not binding on the petitioner herein. Inasmuch as, the jurisdictional Civil Court held against the fifth respondent, the jurisdictional Tahsildar will not be justified in conducting survey in respect of the very same property. The impugned notice is quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

20.01.2023

NCS : Yes/No
Index : Yes / No
Internet : Yes/ No
ias



W.P(MD)No.27911 of 2022

WEB COPY

To:-

- 1.The District Collector,
Madurai District,
Madurai.
- 2.The District Revenue Officer,
Madurai District, Madurai.
- 3.The Tahsildar,
Vadipatti Taluk,
Vadipatti,
Madurai District.
- 4.The Taluk Sub-Inspector (Land Survey),
Taluk Office, Vadipatti Taluk,
Vadipatti, Madurai District.



WEB COPY



W.P(MD)No.27911 of 2022

G.R.SWAMINATHAN, J.

ias

W.P(MD)No.27911 of 2022

20.01.2023