



WEB COPY



WP.No.11532 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **26.04.2024**

CORAM

**THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR**

**WP.No.11532 of 2024**  
**and**  
**W.M.P. No.12631 of 2024**

R.Mohan

.. Petitioner

Versus

1. The Sub Collector  
Tiruppur.

2. The Tahsildar (Revenue),  
Avinashi.

3. The Taluk Surveyor,  
Avinashi West.

4. Chandrakalamani

5. Ponnusamy

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the order passed by the 2<sup>nd</sup> respondent in S.B.A.300/2023/S-1, dated 29.02.2024 and to quash the same.



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For Petitioner : Mr.Sarath Chandran  
for Mr.V.Anandhamoorthy

For R1 to 3 : Mr.A.Selvendran  
Special Government Pleader

### **ORDER**

By consent of both sides, the Writ Petition is taken up for final disposal at the admission stage itself.

2. Notice is dispensed with for the respondents 4 and 5 since the order is itself ex-facie illegal.

3. This writ petition has been filed to call for the records pertaining to the order passed by the 2<sup>nd</sup> respondent in S.B.A.300/2023/S-1 dated 29.02.2024 and to quash the same.

4. It is the case of the petitioner that he was allotted a property in S.No.13/1 to the extent of P.Acre 0.13 by his family. Since there was a dispute with respect to the petitioner's share, he filed a suit in O.S.No.198 of 2016 against his father and the said suit was decreed on the basis of the compromise between the parties and accordingly, the petitioner's right over the said property was declared and decree was registered as Doc.No.3709/2017 on the



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file of the Sub-Registrar, Avinashi on 25.05.2017. It is the grievance of the petitioner that the 5<sup>th</sup> respondent without having any right over the property, has sold the property and the respondents 4 and 5 have created documents, based on which sale deed and release deed were executed and attempted to trespass into the property on 16.10.2023. In order to prevent the trespass and encroachment on property and to declare the rightful owner of the property, the petitioner filed a suit in O.S.No.462 of 2023, seeking permanent injunction. Pending suit, the 4<sup>th</sup> respondent has submitted application before the 2<sup>nd</sup> respondent seeking to survey the land in S.No.20 and fix the boundaries on 18.10.2023. The 2<sup>nd</sup> respondent conducted an enquiry and the petitioner sought to reject the application of the 4<sup>th</sup> respondent by filing an objection/counter affidavit dated 07.12.2023, stating that in the above said documents the property of the petitioner has been included and regarding that a civil suit is pending. The 2<sup>nd</sup> respondent passed an order dated 29.02.2024, directing the 3<sup>rd</sup> respondent to conduct survey in S.No.20. Hence, the petitioner has filed this Writ Petition, seeking to quash the said proceedings of the 2<sup>nd</sup> respondent.

5. Heard learned counsel for the petitioner as well as the learned Special Government Pleader appearing for the respondents 1 to 3 and perused the materials available on record.



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WEB COPY 6. The challenge has been made against the proceedings of the 2<sup>nd</sup> respondent/Tahsildar for surveying the land. It is the contention of the learned counsel for the petitioner that admittedly the suit in O.S.No.462 of 2023 pending on the file of the Sub-Court, Avinashi is filed by the writ petitioner seeking declaration and permanent injunction. The second item shown in the above suit is the subject matter of the proceedings before this Court. When the suit is pending, the 1<sup>st</sup> defendant/4<sup>th</sup> respondent has approached the Tahsildar for survey of the property and the proceeding came to be passed. When the suit is already pending between the parties, this Court is of the view that the direction passed by the 2<sup>nd</sup> respondent/Tahsildar to survey the land cannot be sustained by way of law. If at all the parties have to establish the right, the survey has to be done only at the orders of the Civil Court and not by the respondents themselves. In such view of the matter, the impugned order passed by the 2<sup>nd</sup> respondent in S.B.A.300/2023/S-1 dated 29.02.2024 stands quashed. Let the parties agitate the rights in the concerned Civil Court and if any demarcation is necessary for effective hearing, let the parties file an appropriate application before the concerned Civil Court for survey by the concerned officials.



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With the above observation, the Writ Petition is allowed. Consequently,

connected Miscellaneous Petition is closed. No costs.

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gsa

Index : Yes/No

Internet : Yes/No

To,

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**N. SATHISH KUMAR, J.**

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