



WEB COPY



W.P.No.20459 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2024

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.No.20459 of 2024

Anton Joel J

...Petitioner

Vs

1.The Tahsildar,
Ayanavaram Taluk,
Chennai – 600 102.

2.Taluk Surveyor,
Ayanavaram Taluk,
Chennai – 600 102.

3.Manivannan

...Respondents

PRAYER :-Writ Petition filed under Article 226 of the Constitution of India, pleased to issue Writ of Mandamus, to direct the 1st and 2nd Respondents to consider the representation dated 16.02.2024 within a reasonable time by ascertaining the boundaries of the petitioner and Respondent having Town Survey Nos. 71(Part) and 72(part) and thereabouts.

For Petitioner : Mr.Ajay Francis Inigo Loyola
For Respondents : Mr.M.R.Gokul Krishnan (For R1 & R2)
Additional Government Pleader
Mr.G.Rajkumar for R3

ORDER



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The present Writ Petition has been filed seeking mandamus directing the respondents to consider the petitioner's representation dated 16.02.2024 within a reasonable time and by ascertaining the boundaries of the petitioner and respondent bearing Town Survey Nos.71 (part) & 72 (part) and thereabouts.

2.It is the case of the petitioner that his father had filed a suit in O.S.No.4607 of 2020 on the file of the VI Additional City Civil Court, Chennai, for a mandatory injunction directing the third respondent to remove the encroachment by removing the three stone pillars and articles dumped in suit property and for permanent injunction restraining the third respondent, his agents, servants or any one acting on behalf from interfering with the petitioner's peaceful possession and enjoyment of the suit property. On 30.11.2023, the suit was decreed after a complete trial. In the judgment, the learned Judge also held that the petitioner and third respondent should approach the second respondent to solve the dispute of encroachment and the third respondent shall not object or prevent the same. Thereafter, the petitioner had sent a letter to the third respondent to adhere to the decree passed by the Court. However, the third respondent had responded by saying that he intends challenging the decree and



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judgment. The third respondent had through his counsel issued a private notice dated 28.02.2024 informing the petitioner that this Court was pleased to grant stay of the decree in C.M.P.No.2645 of 2024 in A.S.No.78 of 2024. The petitioner would submit that the stay was only for a period of two weeks. Thereafter, on 16.02.2024, the petitioner had issued a letter to the respondent to measure the property along with the third respondent's property and ascertain the length and breadth of the property. This is opposed by the 3rd respondent and therefore, the petitioner has come forward with the above Writ Petition.

3.The third respondent had filed a counter, *inter alia*, denied the petitioner's right to the property by contending that the petitioner's parents had purchased the property in T.S.No.72, but had somehow managed to get the name entered in revenue records in respect of T.S.No.71/1, T.S.Nos.71/1 and 71/2 are two separate properties abutting Veerasamy 2nd street, Ayanavaram, Chennai. Even according to the petitioner the dispute is only with respect to the property purchased by the parents of the petitioner under sale deed bearing document No.3619 of 2004 which abuts Veerasamy second street. Petitioner's parents had not purchased the property in T.S.No.71/1, but the revenue records



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stands in their name in respect of the said survey number. The third respondent further submits that all these factors had not been taken into consideration by the VI Additional City Civil Judge decreed O.S.No.4607 of 2020. The respondent has taken up the judgment and decree on appeal in A.S.No.78 of 2024. The petitioner is attempting to survey the lands which cannot be done especially when there is a serious dispute with reference to title. Therefore, he would seek to have Writ Petition dismissed.

4.The learned counsel appearing on behalf of the petitioner would rely upon the observation made by the judge of this Court while passing daily order on 24.06.2024 in A.S.No.78 of 2024 had observed that there is a dispute in title and the title to the disputed property had not been cleared. The property of both the plaintiff and defendants respectively should be measured by the Town Surveyor. The learned Judge had also observed that the party should co-operate with Town Surveyor and the Tahsildar should supervise the survey. The respondent on the other hand would submit that till such time based on the title is resolved, the survey cannot take place.

5.Be that as it may. Considering the fact that the petitioner ha



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made a representation on 16.02.2024 for surveying the property of the petitioner and respondent in Town Survey No.71 (part) & 72 (part), a mandamus is issued to the first respondent to consider the petitioner's representation. The first respondent shall issue notice to the petitioner, the third respondent, neighbouring land owners and parties interested in the land before undertaking the survey. In case any objection is filed before the first respondent regarding title or pendency of civil proceedings, the same shall be first considered by the first respondent. The respondents shall permit them to submit their documents and thereafter pass speaking orders either for surveying or not surveying the land, order shall be speaking order. The exercise shall be completed within a period of twelve weeks from the date of receipt of copy of this order.

6.Accordingly, the Writ Petition is allowed. No costs.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
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P.T.ASHA, J,



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To

1.The Tahsildar,
Ayanavaram Taluk,
Chennai – 600 102.

2.Taluk Surveyor,
Ayanavaram Taluk,
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