



W.P.(MD).No.1804 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2024

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.1804 of 2024

A.Sudar Olivu

... Petitioner

VS.

1.The Tahsildar,
Tenkasi Taluk,
Tenkasi District.

2.The Taluk Sub Inspector of Survey,
Tenkasi Taluk,
Tenkasi District.

3.G.Ramachandran

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned notice in FLA.No.271/23 issued by the second respondent dated 19.01.1024 and to quash the same as illegal and consequently forbearing the respondents 1 and 2 from surveying the property comprised in S.No.63/19 till the disposal of the second appeal in S.A.(MD).No.767 of 2022 pending on the file of this Court.



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For Petitioner : Mr.D.Srinivasaragavan
For R1 & R2 : Mr.P.Thambidurai
Government Advocate

ORDER

This writ petition has been filed challenging the impugned notice in FLA.No.271/23 issued by the second respondent, dated 19.01.1024 and to quash the same and consequently forbearing the respondents 1 and 2 from surveying the property comprised in S.No.63/19 till the disposal of the second appeal in S.A.(MD).No.767 of 2022.

2. The case of the petitioner is that the third respondent has filed a suit in O.S.No.361 of 2015 before the Additional District Munsif Court, Tenkasi seeking the relief of declaration that the 1st item of property in the second schedule is a common pathway to both the plaintiff and the defendants in the suit. In the said suit, the petitioner was added as the first defendant. The petitioner has contested the suit by filing written statement that there is no pathway exist for the third respondent to use the petitioner's property comprised in S.No.63/6B12. Thereafter, the

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learned Additional District Munsif Court, Tenkasi dismissed the suit on 19.09.2019. Against which, the third respondent filed an appeal in A.S.No.1 of 2020 before the Principal Sub Court, Tenkasi and the same was also dismissed on 03.03.2022. Against which, he preferred the second appeal before this Court in S.A.(MD).No.767 of 2022 and the same was pending without any interim order. While so, the third respondent has approached the respondents 1 and 2 to survey the suit property in S.No.63/19. The Firka Surveyor, Kallurani informed the petitioner about the survey of property on 06.10.2023 and the petitioner has given his objection for the proposed survey, on 18.10.2023. After receiving the same, the respondents 1 and 2 once again sent another notice to the petitioner on 11.01.2014. For which also, he raised his objection. However, the respondents 1 and 2 have mechanically issued notice for surveying the property again and again without taking note of his valid objection. As against the present impugned notice issued by the second respondent, dated 19.01.2024, the petitioner has filed the present writ petition.



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3. The learned Government Advocate appearing for the respondents 1 and 2 would submit that they have issued notice on 19.01.2024 in RLA.No.271/2023, to measure the property in S.No.63/19 and the petitioner and the adjacent land owners were directed to appear before the Village Administrative Office on 31.01.2024 at 10.00 a.m. with relevant documents. Challenging the same, the petitioner has approached this Court.

4. Heard the leaned counsel for the petitioner and the learned Government Advocate appearing for the respondents 1 and 2.

5. Originally the third respondent has filed a suit in O.S.No.361 of 2015 before the Additional District Munsif Court, Tenkasi against the petitioner and others for the relief of declaration that the 1st item of property in the second schedule is a common pathway to both the plaintiff and the defendants in the suit. After elaborate trial, the trial Court has dismissed the suit. There is no such S.No.63/19 in the said suit.



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It talks about only S.Nos.63/6B12, 62/4, 62/3 and 63/6B11. Further, the first appeal and the second appeal talk about only S.Nos.62/3 and 62/4 and nowhere it has been stated as S.No.63/19.

6. In view of the above, if the petitioner has any right over the property in S.No.63/19, he should appear before the authority concerned and prove the same by way of appropriate documents and he cannot challenge the said notice before this Court and the respondents are directed to consider the objection if any received from the petitioner and pass appropriate orders, on merits and in accordance with law.

7. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

30.01.2024

Index: Yes/No
Internet: Yes/No

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To

- 1.The Tahsildar,
Tenkasi Taluk,
Tenkasi District.

- 2.The Taluk Sub Inspector of Survey,
Tenkasi Taluk,
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V.BHAVANI SUBBAROYAN,J.

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