



W.P.(MD)No.9494 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.9494 of 2021

and

W.M.P.(MD)Nos.7227 and 7228 of 2021

A.Xavier Edward Raj
President
Mukkalampadu Village Munnetra Sangam
Door No.5/8, Mukkalampadu
Kurunthancode Post
Kalkulam Taluk
Kanyakumari District.

...Petitioner

Vs.

1. The District Collector,
Kanyakumari District.
2. The District Survey & Settlement Officer,
Kanyakumari District.
3. The Central Survey Office,
Chennai.
4. The Revenue Divisional Officer-cum-
Sub Divisional Magistrate,
Padmanabhapuram,
Kanyakumari District.



W.P(MD)No.9494 of 2021

5. The Taluk Surveyor,
Kalkulam Taluk,
Kanyakumari District.
6. The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.
7. The Village Administrative Officer,
Kakkoccode Thalai Village,
Kalkulam Taluk,
Kanyakumari District.
8. J.Joseph Benedic
President
Chekkaravilai, Kurunthancode Post,
Kalkulam Taluk,
Kanyakumari District.
9. C.Mathi Kumar
Secretary
A/m.Srivaraprasatha Vinayagar Temple,
Chekkaravilai,
Kalkulam Taluk,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the first respondent in Mu.Mu.C3/8329/2021 dated 15.04.2021 and the impugned order of the fourth respondent herein in Na.Ka.A2/1376/2017 dated 04.02.2021 and consequently direct the respondents 1, 2, 4 and 6 to conduct enquiry on production and verification of original survey map of



W.P(MD)No.9494 of 2021

Eraniel published in 1979 in the office of the respondents 1 to 3 herein and in particular the Central Survey Office, Chennai.

For Petitioner : Mr.R.Russel Raj
For R1 to R7 : Mr.V.Om Prakash
Government Advocate
For R8 & R9 : Mr.G.Sridharan

ORDER

The Writ Petition is directed against the order dated 15.04.2021 passed by the first respondent in the appeal preferred by the writ petitioner and for directions to the respondents 1, 2, 4 and 6 to conduct enquiry on production and verification of original survey map of Eraniel published in 1979 in the office of the respondents 1 to 3 and in particular the Central Survey Office, Chennai.

2. It is not in dispute that there existed disputes between two parties regarding the issue of naming of St.Vyakula Annai Church.

3. According to the official respondents, a church, community hall and pastor's head quarters are situated in R.Sy.No.735/16 of



W.P(MD)No.9494 of 2021

Kakkottuthalai Village, Kalkulam Taluk as per the revenue records and the above buildings are coming under Ward No.4 of Kakkottuthalai Panchayat and the same is recorded as Chekkaravilai, as per the Village Panchayat records.

4. It is not in dispute that the fourth respondent has initially passed an order dated 29.08.2017 and that in the appeal filed by the writ petitioner, the first respondent has remanded the matter back to the Sub Collector, Padmanabhapuram for fresh enquiry, by considering both side views vide order dated 23.02.2018.

5. In pursuance of the said direction of the first respondent, the Sub Collector has passed an order dated 04.02.2021. Challenging the same, the writ petitioner has preferred an appeal before the first respondent and the first respondent has passed the impugned order dated 15.04.2021 rejecting the appeal. Aggrieved by the same, the present writ petition came to be filed.

6. As rightly contended by the learned counsel appearing for the writ petitioner, the first respondent, without considering the appeal, by



W.P(MD)No.9494 of 2021

WEB COPY

observing that the earlier appeal was disposed of, directing the Sub Collector to conduct enquiry and on that basis, the Sub Collector has already passed an order and as such, the appeal cannot be entertained, rejected the appeal.

7. The learned Government Advocate appearing for the respondents 1 to 7 would fairly concede that the way in which the appeal was dealt with and the way in which the impugned order came to be passed, cannot be sustained.

8. It is shocking to notice that the first respondent has proceeded to reject the appeal on the ground that he has already decided the appeal and remanded the matter back to the Sub Collector and on that basis, the Sub Collector has conducted fresh enquiry and passed an order. Since the Sub Collector has conducted enquiry in pursuance of the remand order passed by the first respondent and passed an order, the aggrieved parties are certainly entitled to prefer an appeal before the first respondent.

9. The learned counsel appearing for the writ petitioner would further submit that though the writ petitioner has taken a stand that the



W.P(MD)No.9494 of 2021

present issue has to be solved by invoking the provisions of the Survey and Boundaries Act, but the same was not considered by the authorities.

10. In view of the above, this Court has no hesitation to hold that the impugned order, which is legally unsustainable, is liable to be quashed and the first respondent is to be directed to restore the appeal on his file and to hear the parties and pass orders. Accordingly, the first respondent is directed to restore the appeal filed by the writ petitioner on his file and hear the writ petitioner and the private respondents and also consider the representation of the writ petitioner to invoke the provision of the Survey and Boundaries Act and thereafter pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order.

11. With the above direction, this Writ Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

03.07.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
csm



W.P(MD)No.9494 of 2021

WEB COPY

To

1. The District Collector,
Kanyakumari District.
2. The District Survey & Settlement Officer,
Kanyakumari District.
3. The Central Survey Office,
Chennai.
4. The Revenue Divisional Officer-cum-
Sub Divisional Magistrate,
Padmanabhapuram,
Kanyakumari District.
5. The Taluk Surveyor,
Kalkulam Taluk,
Kanyakumari District.
6. The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.
7. The Village Administrative Officer,
Kakkocode Thalai Village,
Kalkulam Taluk,
Kanyakumari District.



WEB COPY



W.P(MD)No.9494 of 2021

K.MURALI SHANKAR, J

csm

Order made in
W.P.(MD)No.9494 of 2021
and
W.M.P.(MD)Nos.7227 and 7228 of 2021

Dated : 03.07.2024