



W.P.(MD) No.10257 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2024

CORAM:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.(MD) No.10257 of 2024

Muthu Krishnan @ Muthaiah ... Petitioner

-vs-

1.The District Collector,
Theni District,
Theni.

2.The Commissioner,
Municipality,
Periyakulam Taluk,
Theni District.

3.The Tahsildar,
Periyakulam Taluk,
Theni District.

4.The Town Surveyor,
Periyakulam Municipality,
Periyakulam,
Theni District

5.Janaki Ammal ... Respondents



W.P.(MD) No.10257 of 2024

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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, to call for the records of impugned order passed by the 3rd respondent in his memorandum, dated 10.04.2024, and quash the same as illegal and unconstitutional and consequently direct the respondents 1 and 2 to ensure free access through the scheme road available in S.No.4628/20, which correlates to S.No.4628/1A2A Thenkarai, Periyakulam Village, Theni District.

For Petitioner : Mr.A.Prasanna Rajadurai

For Respondents 1, 3 & 4: Mr.M.Muthumanikkam,
Govt. Advocate.

For Respondent 2 : Mr.N.Dilip Kumar

For Respondent 5 : Mr.S.Sivaprakash

ORDER

The petitioner has filed this Writ Petition for issuance of a writ of certiorarified mandamus, to call for the records of impugned order passed by the 3rd respondent in his memorandum, dated 10.04.2024, and quash the same as illegal and unconstitutional and consequently direct the respondents



W.P.(MD) No.10257 of 2024

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1 and 2 to ensure free access through the scheme road available in S.No. 4628/20, which correlates to S.No.4628/1A2A Thenkarai, Periyakulam Village, Theni District.

2. The petitioner and his brothers purchased the subject property in Survey No.4628/20, correlating to S.No.4628/1A2A, at Thenkarai, Periyakulam Village, Theni District, under a registered sale deed No.289 of 1993. Subsequently, one of the petitioner's brothers filed a partition suit in O.S.No.286 of 2000 on the file of Sub Court, Periyakulam, and the same was decreed. There is a proposed scheme road on the east and north side of the petitioner's property and the legal heirs of the petitioner's vendors tried to mutate the land earmarked for the proposed scheme road, taking advantage of the failure of the respondent in not getting the same gifted from the original owner. While so, the fifth respondent, legal heir of one Kanagavalli, approached the third respondent for survey of the land and also for issuance of patta. Thereafter, the fifth respondent filed W.P.(MD) No.20791 of 2023 to consider her representation for survey of the subject property with police protection. The said writ petition was disposed of on 25.08.2023, directing the third respondent herein to issue notice to the objectors as per Section 10 of the Tamil Nadu Survey and Boundaries Act,1923, and, thereafter, take a



W.P.(MD) No.10257 of 2024

WEB COPY

decision in accordance with law within a period of six weeks from the date of receipt of the said order.

3. Learned counsel for the petitioner submits that in pursuance of the above said order of this Court, notice of survey was served on the petitioner on 10.04.2024 and the petitioner submitted his objections to the survey on 17.04.2024. Learned counsel for the petitioner further submits that the proposed survey was in violation of the orders passed by this Court in W.P.(MD) No.20791 of 2023 and, therefore, the petitioner filed the above Writ Petition for the aforesaid relief.

4. At the time of hearing, learned Government Advocate submitted a report of the Surveyor and stated that the survey was already conducted as per the directions of this Court in W.P.(MD) No.20791 of 2023. He further submitted that the Village Administrative Officer recorded that even the signature of the petitioner was obtained in the survey report. However, learned counsel for the petitioner disputes the petitioner's signature in the survey report. Learned Government Advocate submits that he was orally informed that the petitioner was not present when the survey was conducted. If the petitioner was not present at the time of conduct of the survey, then, as rightly pointed out by the learned counsel for the petitioner, the survey report was probably prepared in the office of the surveyor. In any event, without



W.P.(MD) No.10257 of 2024

going into the factual disputes, I am of the view that ends of justice would be met if the following directions are issued.

5. With the consent of the learned counsel on both sides, this Writ Petition is taken up for final disposal at the admission stage itself. If any person is aggrieved by this order, it is open for him/her to move this Court either by way of review or recall of this order, if there is any suppression of material facts by the petitioner.

6. This Court, in W.P(MD)No.12676 of 2024, dated 14.06.2024, issued certain directions for considering the application for survey and fixing the boundary. Following the said order, the following directions are issued:

(I) The petitioner is directed to submit his / her application in on-line mode. The survey authority will scrutinize if the application submitted by the petitioner is in order. Patta need not be in the name of the applicant. If patta is in the name of the vendor and mutation has not been effected, still the application can be considered.

(II) The petitioner will have to enclose all the relevant documents such as patta. The applicant must have individual patta



W.P.(MD) No.10257 of 2024

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(III) The survey authority will issue notice to the writ petitioner as well as the adjacent land owners and also to the interested persons, if any.

(IV) Enquiry shall be held. During enquiry, objections raised by the adjacent land owners / interested persons shall be considered.

(V) If according to the jurisdictional authority, the objections are without any basis, the same shall be overruled and the objectors shall be informed accordingly. But the survey will be conducted only after a period of six weeks so that the objector can move the concerned Court for injunction. If before the proposed date of survey, the objector is unable to obtain any injunction order, the survey can very well go on.

(VI) It is open to the parties to serve memo of instructions to the surveyor at the time of conducting survey. The same will be borne in mind. While it cannot be binding on the surveyor, the same will be taken note of.



W.P.(MD) No.10257 of 2024

WEB COPY

(VII) If the jurisdictional authority finds objections to be having substance, then, he shall call upon the applicant to move the jurisdictional civil Court for agitating his rights.

(VIII) If required, the survey authority is empowered to seek aid of the jurisdictional police and the jurisdictional police are mandated to grant police protection.

(IX) It is made clear that at the end of the survey exercise, survey stones alone can be installed. The exercise of survey and demarcation undertaken pursuant to the direction of this Court can never result in dispossession of any party. If the petitioner wants to put up fencing and if there is any objection from any private party, fencing can be put up only after the petitioner obtains decree from the jurisdictional Civil Court.

(X) The survey authority will conclude the entire exercise one way or the other within a period of twelve weeks after service of notice on the interested persons.

(XI) A copy of the survey report along with sketch will be served on the parties.



W.P.(MD) No.10257 of 2024

WEB COPY

7. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected W.M.P.(MD) Nos.9224, 9225 and 18169 of 2024 are closed.

29.11.2024

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

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W.P.(MD) No.10257 of 2024

N.MALA, J.

dixit

W.P.(MD) No.10257 of 2024

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