



W.P.(MD)No.28147 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.12.2024**

CORAM:

THE HONOURABLE **MRS.JUSTICE N.MALA**

W.P.(MD)No.28147 of 2022

K.Maheshwaran

...Petitioner

/Vs./

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2. Assistant Director of Survey,
The Collector Office Building,
Thoothukudi,
Thoothukudi District.

3. The Tahsildar,
Kovilpatti,
Thoothukudi District.

4. The Head Surveyor,
Taluk Office,
Kovilpatti,
Thoothukudi District.

5. Anthony Chellamal

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in connection with the impugned order dated 29.11.2022 made in Na.Ka.A1/P.A.Manu-426/2022 by the 3rd respondent and set aside the same as erroneous and illegal and consequently direct the respondents to make necessary measurements for mets and bounds in the petitioner's property bearing Survey No.241/1 situated at Duraiyur Village, Kovilpatti, Thoothukudi District forthwith.

For Petitioner : Mr.S.Palani Velayutham
For Respondents : Mr.R.Ragavendran (R1 to R4)
Government Advocate
Mr.R.Murali (R5)

ORDER

This writ petition has been filed for a writ of certiorarified mandamus to quash the records of the third respondent dated 29.11.2022 and consequently to direct the respondents to make necessary measurements of the petitioner's property.

2. Heard the learned counsel on either side and perused the materials placed before this Court.



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3. The petitioner purchased the property in survey number 241 / 1 measuring to an extent of 0.46.50 hectares situated at Duraiyur Village, Kovilpatti Panchayat, Thoothukudi District, under the sale deed dated 20.07.2022. The petitioner, after purchase of the subject property sent an application on 26.10.2022 to the third respondent to conduct survey and demarcate the boundaries of the subject property along with necessary fee. In pursuance of the petitioner's application, the third respondent passed the impugned order rejecting the petitioner's request for survey and demarcation of the boundaries. Aggrieved by the impugned order, the petitioner filed the above writ petition for the aforesaid relief.

4. It is seen from reading of the impugned order that the petitioner's request for survey and demarcation of the boundaries of the subject property was rejected on the ground that a civil suit in OS No. 244 of 2022 is pending before the District Munsif Court, Kovilpatti.

5. The reason cited by the third respondent for rejecting the petitioner's request in the impugned order is against the Circular issued



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by the Commissioner of Survey and Settlement in RC No.25/20403/2020 (sy) dated 15.03.2021, wherein in Clause (4), it is clearly stated that mere pendency of litigation before Courts is not a bar for the authorities to conduct survey or resurvey in the absence of any stay / interim order / interim injunction from proceeding further. Therefore, I find that the impugned order cannot be sustained and the same is set aside.

6. It is open to any aggrieved party 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.

7. 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



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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 in his / her name. If he / she is having joint patta, co-pattadars must give their consent for conducting survey.

(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.



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(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.

(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



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after service of notice on the interested persons.

(XI) A copy of the survey report along with sketch will be served on the parties. No costs.

8. With the aforesaid directions, the Writ Petition stands allowed.

No costs.

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Index : Yes / No
NCC : Yes / No
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N.MALA, J.

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Order made in
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Dated:
10.12.2024