



WP(MD)No.28005 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2024

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

W.P(MD)No.28005 of 2024

Gurulakshmi

...Petitioner

Vs.

1.The District Collector,
Tenkasi, Tenkasi District.

2.The Thasildar,
Office of the Taluk Office,
Sivagiri,
Tenkasi District.

3.The Head Surveyor,
Taluk Office,
Sivagiri, Tenkasi District.

4.The Inspector of Police,
Sivagiri Police Station,
Tenkasi District.

5.Elayaperumal

6.Annamalaisamy

...Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India to issue a writ of mandamus directing the respondents 2 and 3 to survey and demarcate the petitioner's landed properties Survey No. 454/1B2 to an extent of 1 acre and situated Viswanathaperi Village Part 2, Sivagiri Taluk, Tenkasi District on the basis of the petitioner's application dated 19.10.2024 after given necessary opportunity to the parties concerned within time frame as fixed by this Court.



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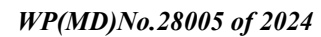
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For Petitioner : Mr.B.Arun
For R1 to R3 : Mr.R.Ragavendran
Government Advocate
For R4 : Mr.K.Gnana Sekaran
Government Advocate (Crl.side)

ORDER

This Writ Petition is filed for issuance of writ of mandamus directing the respondents 2 and 3 to survey and demarcate the petitioner's landed properties Survey No.454/1B2 to an extent of 1 acre and situated Viswanathaperi Village Part 2, Sivagiri Taluk, Tenkasi District on the basis of the petitioner's application dated 19.10.2024 after given necessary opportunity to the parties concerned within time frame as fixed by this Court.

2. The petitioner acquired the subject property vide sale deed dated 05.02.2021. The petitioner was in peaceful possession and enjoyment of the same. While so, the respondents 4 and 5, who were the adjacent owners tried to interfere with the petitioner's peaceful possession and enjoyment of the property. The petitioner gave a complaint to the fourth respondent and also approached survey Department for survey of his subject land by filing an application dated 19.10.2024. As the petitioner's application was not processed, the petitioner filed the above Writ Petition for the aforesaid relief.



3. In the present case, the petitioner has not submitted a

4. The Hon'ble Supreme Court of India on the nature of a writ of

(i)Saraswathi Industrial Syndicate Limited and others Vs

"24. As the appeals fail on merits we need not discuss the technical difficulty which an application for a writ of certiorari would encounter when no quasi-judicial proceedings was before the High Court. The powers of the high Court under Article 226 are not strictly confined to the limits to which proceedings for prohibitive writs are subject in English practice. Nevertheless it is a well recognised rule that no writ or order in the nature of a mandamus would issue when there is no failure to perform a statutory duty applies in this country as well. Even in cases of proved breaches of mandatory duties the salutary general rule which is subject to certain exceptions applied by us as it is in England and when writ of Mandamus is asked for could be stated as it is set out in Halsbury's Laws of England (3rd edition vol. 106):

"As a general rule the order will not be granted unless the party complained of has known what it was he was required to do so that he had the means of considering whether or not he should comply and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce and that that demand was met by a refusal."



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25. In the cases before us there was no such, demand refusal. Thus no ground whatsoever is shown here for the issue of any writ order or direction under Article 226 of the Constitution. These appeals must be and are hereby dismissed but in the circumstances of the case we make no order as to costs.

(ii) In **Amrit Lal Berry Vs K.N.Kapur and others** reported in **1975 (4) SCC 714**, the Court held as follows:

"25. In the petition of K. N. Kapur & others, we do not even find at assertion that any representation was made against any violation of a petitioner's right. Hence, the rule recognised by this Court is Kamini Kumar Das Choudhury v. State of West Bengal & Ors. that a demand for justice and its refusal must precede the filing of a petition asking for direction or Writ of Mandamus, would also operate against the petitioners."

(iii) In **the State of Haryana and others Vs Chanan Mal and others** reported in **1977 1 SCC 340**, it was held as follows:

"43. Any petitioner who applies for a writ or order in the nature of a mandamus should, in compliance with a well known rule of practice, ordinarily, first call upon the authority concerned to discharge its legal obligation and show that it has refused or neglected to carry it out within a reasonable time before applying to a Court for such an order even where the alleged obligation is established."

5. Even in the latest judgments reported in **2022(17) SCC 188 (Union of India and others Vs. Bharat Forge Limited and another)** and **2023(1) SCC 386 (Hero Motocorp Limited Vs. Union of India and others)**, the Hon'ble Supreme Court of India had enunciated the principles of writ of mandamus.



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6. From a reading of the aforesaid judgments, it is clear that there should be a demand and refusal for mandamus. The purpose behind making a demand is to give an opportunity to the authorities to redress the grievance. The demand is not an empty formality, but it should be made with a view to giving an opportunity to the authority to comply with the same. Giving of reasonable opportunity, in my view, is not a mere ritual. The authority should be given practicable time to comply with the demand. In the present case, no representation was submitted and therefore, in my view, in the absence of a representation, the mandamus prayed for cannot be issued. I am therefore inclined to dismiss the writ petition. It is open to the petitioner to submit a representation to the respondents giving reasonable time for compliance, failing which, to apply for writ of mandamus. The writ petition is dismissed with the above observation. No costs.

25.11.2024

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



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N.MALA,J.

CM

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