



W.P.(MD) No.4402 of 2025

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:19.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.(MD) No.4402 of 2025

and

W.M.P(MD)Nos.3164, 3166 and 3168 of 2025

Jothi

... Petitioner

vs.

- 1.The District Collector,
Ramanathapuram District.
- 2.The District Revenue Officer,
Office of the District Revenue Officer,
Ramanathapuram District.
- 3.The Tahsildar,
Kamuthi Taluk,
Ramanathapuram District.
- 4.The Taluk Surveyor,
Kamuthi Taluk,
Ramanathapuram District.
- 5.Minor Sarveswarapandiyan
Rep. by the Natural Guardian
Sendurpandiyan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to



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the impugned order passed by the third respondent in Na.Ka/D1/5922/2024 dated 24.12.2024 and quash the same as illegal and consequently forbear the respondents 3 and 4 from conducting survey in S.No.28/3, Perunazhi Village, Perunazhi Group, Kamuthi Taluk, Ramanathapuram District.

For Petitioner : Mr.K.Navaneetharaja

For Respondents : Mr.B.Saravanan
Additional Government Pleader for R1 to R4

Mr.B.Prahalad Ravi for R5

ORDER

The writ petition is taken up for final disposal with the consent of the learned counsel on either side.

2.The writ petitioner challenges the impugned order passed by the third respondent in Na.Ka/D1/5922/2024 dated 24.12.2024 as being illegal and consequently seeks to forbear the respondents 3 and 4 from conducting survey in S.No.28/3, Perunazhi Village, Perunazhi Group, Kamuthi Taluk, Ramanathapuram District.



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3. After hearing the learned counsel appearing on either side, it is seen that there is a civil suit pending in O.S.No.17 of 2019 before the learned Sub Court, Mudhukulathur. The said suit is filed for substantive relief of declaration and injunction. Admittedly, the said suit is pending and the petitioner as well as the fifth respondent are parties to the said suit. The petitioner has objected to the survey being conducted at the behest of the fifth respondent. The fifth respondent has obtained an order from this Court seeking survey through her guardian in W.P(MD)No.7417 of 2024 on 25.03.2024. By order dated, 25.03.2024, this Court directed survey to be conducted based on the application and issued certain guidelines to be followed at the time of survey. The writ petitioner herein, aggrieved by the conduct of the official respondents, sought to review the said order passed in W.P(MD)No.7417 of 2024. The review application in Rev.Aplw(MD)No.212 of 2024 came to be disposed of on 26.11.2024. Paragraph No.3 of the order in the review petition is extracted for easy reference:

“...3.The learned Additional Government Pleader states that the direction given by this Court are being scrupulously followed. It is stated that the review applicant was put on notice. The petitioner also gave her objections. A speaking order is yet to be passed. I have not issued any mandate as to how the order should be passed. That is left to the discretion of the authority concerned. The order if adverse to the review applicant



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4.It is the contention of the petitioner that without complying with the directions issued in the writ petition and without an opportunity being granted to the writ petitioner, the official respondents are proceeding to conduct a survey. As seen from paragraph 3 of the order in the review petition, this Court took note of the fact that the writ petitioner had given her objections and found the review petition being premature, since the speaking order was not passed by the third respondent in the present writ petition and further directed that the petitioner could always approach the civil Court and seek to forbear the authority from conducting survey, in the event of the third respondent passing any adverse orders. The review petition was disposed of with a direction to the Tashildar, Kamuthi Taluk, to scrupulously adhere to the directions given by this Court in W.P(MD)No.7417 of 2024.



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5.Subsequently, in and by the impugned order dated 24.12.2024, the Tashildar, Kamuthi Taluk has impliedly rejected the objections of the writ petitioner and directed survey to be conducted. Challenging the said order, the present writ petition has been filed.

6.It is admitted on both sides that O.S.No.17 of 2019 is pending before the Sub Court, Mudhukulathur. The subject matter of dispute in the said suit is also pertaining to the very same S.No.28/3. The sub-divided S.No.28/3C is sought to be surveyed by the fifth respondent in this writ petition.

7.I have gone through the impugned order. The objections of the petitioner have not even been discussed, leave alone the same being considered and hence, the impugned order is certainly not qualifying to be a speaking order. In fact, this Court, while disposing of the review petition had clearly recorded that the petitioner had given his objections and a speaking order was yet to be passed and in the event of the said order being adverse to the review applicant, then the review applicant would have to approach the concerned court and seek an injunction to forbear the authority from conducting a survey. However, in the



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impugned order, after merely extracting the order in the review petition, the review petitioner has been directed to approach the civil Court and obtain an interim injunction. There is absolutely no consideration of the objections made by the petitioner. On this limited ground alone, the impugned order deserves to be set aside. However, at the same time, considering that the suit for declaration is pending before the competent civil Court where both the petitioner and the fifth respondent are parties, in the interest of justice and to avoid further multiplicity of proceedings, the survey could be done by appointing an Advocate Commissioner in the pending suit.

8.The learned counsel for the fifth respondent sought time to get instructions and the matter was passed over. When it is taken up post-lunch, the learned counsel for the fifth respondent fairly submitted that an Advocate Commissioner could be appointed in this Court with a direction to survey the lands comprised in S.No.28/3C and that the surveyor could fix the boundary stones alone, without permitting the parties to put up any fence.

9.In view of the above and considering the circumstances, which have been discussed hereinabove, in order to protect the interest of both the petitioner and



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the fifth respondent, it would be appropriate for an Advocate Commissioner to be appointed in the pending suit in O.S.No.17 of 2019, who shall take the assistance of the Taluk Surveyor and survey the property comprised in S.No.28/3C and fix the boundary lines.

10.At this juncture, the learned counsel for the petitioner submitted that the boundary stones could be fixed only if there is no superstructure and the land remains vacant.

11.Considering the said objection of the learned counsel for the petitioner, a further direction is issued to the Advocate Commissioner to permit the Surveyor to fix the boundary stones only in the event of the subject lands being vacant and not otherwise.

12.In the light of the above, the Writ Petition is disposed of in the following manner:

(i) ***Mr.S.Kandasamypandian, Advocate, EN.No.2461/2021, No. 174, Law Chamber, Mobile No.83001 20111, Madurai***, is appointed as an Advocate Commissioner to inspect the suit property comprised in



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WEB COPY S.No.28/3C with the assistance of the Taluk Surveyor concerned and in the event of the lands being vacant, permit the Surveyor in his presence to fix the boundary stones and not otherwise.

(ii) The parties shall furnish all relevant documents of title to the Advocate Commissioner, who shall also take into account the same while carrying out the exercise of measuring the property before fixing the boundary stones, if permissible, subject to the above directions.

(iii) The survey report shall be enclosed along with the Advocate Commissioner's report and filed before the Sub Court, Mudhukulathur, in O.S.No.17 of 2019 and if any of the parties are aggrieved by the report, including the survey report, it shall be open to them to file their objections and also seek to cross-examine the Commissioner/Surveyor.

13.The learned counsel for the petitioner submits that he will ensure that there is no disturbance caused to the Advocate Commissioner and the Surveyor in conducting the survey on the proposed date.

14.It is made clear that the survey report is only to identify the lands in S.No.28/3C and at best, fixed boundary stones in the event of the land being



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vacant and there shall be no dispossession under the guise of the survey. No costs.

Consequently connected miscellaneous petitions are closed.

15.The Advocate Commissioner shall be paid remuneration of Rs.30,000/-
which shall be shared by the petitioner and the fifth respondent equally.

19.02.2025

sjj

NCC: Yes/No

Index : Yes / No

Internet : Yes / No

To

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Ramanathapuram District.
- 2.The District Revenue Officer,
Office of the District Revenue Officer,
Ramanathapuram District.
- 3.The Tahsildar,
Kamuthi Taluk,
Ramanathapuram District.
- 4.The Taluk Surveyor,
Kamuthi Taluk,
Ramanathapuram District.

Copy to

***Mr.S.Kandasampandian, Advocate,
EN.No.2461/2021, No.174, Law Chamber,
Mobile No.83001 20111, Madurai.***

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P.B.BALAJI, J.

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