



W.P.(MD) No.6107 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 22.08.2025

PRONOUNCED ON : 28.08.2025

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P.(MD) No.6107 of 2025
and W.M.P.(MD) Nos.4489, 16363 & 16541 of 2025

Dr.Vijayakumar

... Petitioner

Vs

1. The Tahsildar,
Thirupuvanam Taluk,
Sivagangai District.
2. The Sub-Surveyor,
Konthagai Revenue Village,
Thirupuvanam Taluk,
Sivagangai District.
3. D.Udayakumar
4. G.Sukumar
5. U.Swaroop

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the impugned notice in Na.Ka.A3/544/2025 dated 20.02.2025 on the file of 1st respondent and quash the same.



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For Petitioner : Mr.S.Selva Aditya for
Mr.G.Prabhu Rajadurai

For Respondents : Mr.D.S.Nedunchezian,
Govt. Advocate for R1 & R2

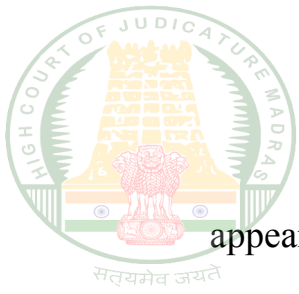
Mr.A.Ragatheesh Kumar for
M/s.Isaac Chambers for R3 & R5

M/s.Varuni Mohan for R4

ORDER

This writ petition is filed challenging the impugned notice issued by the first respondent calling the petitioner and the respondents 3 and 4 for enquiry to take a decision on the application submitted by the respondents 3 and 4 seeking survey of the subject property and the objections of the petitioner for survey of the subject property situated in S.No.31/3B2 in Konthagai Village, Thiruppuvanam Taluk, Sivagangai District.

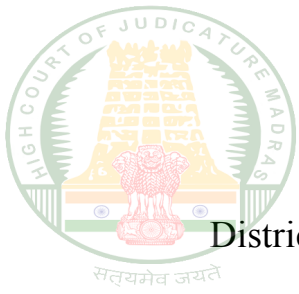
2. Heard the arguments of Mr.S.Selva Aditya, learned counsel representing Mr.G.Prabhu Rajadurai, learned counsel on record for the petitioner, Mr.D.S.Nedunchezian, learned Government Advocate,



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appearing for respondents 1 and 2, Mr.A.Ragatheesh Kumar, learned counsel representing M/s.Isaac Chambers, for respondents 3 and 5 and Mr.Varuni Mohan, learned counsel appearing for 4th respondent.

3. It is the case of the petitioner that he and the third respondent are brothers. Their father V.K.Duraisamy executed a Will dated 13.12.1985 bequeathing his properties to the petitioner and the third respondent. In the said Will schedule-C was kept as common pathway to reach the properties allotted to the petitioner and the third respondent. The dispute in this writ petition pertains to survey of the said common pathway. It is also stated that East-West measurement of the subject pathway was referred to as 18 feet in the Will executed by his father. However, both the parties formed a broader common pathway with a breadth of 20 to 24 feet and the same has been in use for the past 40 years. The land used as a common pathway is given separate survey numbers viz., S.No.32/1E, 31/3A1 and 31/3B1. Later, a dispute arose between the petitioner and the respondents 3 to 5 with regard to the enjoyment of the subject common pathway. The 5th respondent is the son of 3rd respondent and 4th respondent is one of the neighbours. The petitioner filed a civil suit in O.S.No.6 of 2025 on the file of the Principal



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District Court, Sivagangai in respect of the subject common pathway seeking declaration, declaring that the same was common pathway for petitioner and respondents 3 and 5. The petitioner also sought for a consequential injunction restraining the respondents 3 to 5 from interfering with the petitioner's right of enjoyment. The petitioner also prayed for injunction restraining the respondents 3 to 5 from altering the physical features. The said suit is pending. Even prior to filing of the suit by the petitioner, the respondents 3 and 4 filed an application on 12.11.2024 seeking survey of the subject common pathway. The petitioner filed an objection on 28.01.2025 citing the pendency of the civil suit. It is seen from the typed set of papers and the impugned order, the application for survey was filed by the respondents 3 and 4 on 12.11.2024 and the suit was filed in January 2025. Subsequently, an objection was filed by the petitioner citing pendency of the civil suit on 28.01.2025. In these circumstances, the impugned enquiry notice was issued by the first respondent, directing the petitioner and the private respondents 3 and 4 to appear for enquiry. Aggrieved by the same, the petitioner has come before this Court.

4. The learned counsel appearing for the petitioner would submit



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that when the civil suit is pending between the parties, the first respondent was not justified in issuing the impugned notice calling for enquiry. The learned counsel for the petitioner further submits that if the private respondents want to survey the property, they can do so by filing an application for appointment of surveyor before the civil Court in the pending litigation and the petitioner has no objection for survey of the property by moving an application before the civil Court.

5. The learned counsel appearing for the private respondents 3 and 5 would submit that an application has been filed by the respondents 3 and 4 before the first respondent seeking survey of the subject property and in the absence of any restraint order by the civil Court, there may not be any impediment for the first respondent to consider the request for survey of the property.

6. A mere survey of the property will not result in dispossession of a person in lawful possession of the subject property. Likewise the survey will not affect the substantial right of the parties over the subject property. The right of the parties and their alleged possession have to be decided only by the civil Court. Further the application for survey filed



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by private respondents is anterior in time and the suit filed by the petitioner is subsequent to such application.

7. Therefore, this Court is not inclined to interfere with the enquiry notice issued by the first respondent and the Writ Petition is dismissed with the liberty to the petitioner to raise his objections before the first respondent. The first respondent can proceed with the enquiry by giving sufficient opportunity to the petitioner and respondents 3 to 5 and pass final orders with regard to the request made by the private respondents seeking survey of the property within a period of six (6) weeks from the date of receipt of a copy of this order. In the meantime, the petitioner is at liberty to move the civil Court seeking necessary restraint order against survey of the property. If the petitioner is not able to get any restraint order from the civil Court within the period of six (6) weeks, the first respondent is at liberty to proceed in accordance with law as per the decision taken by him in the enquiry.

8. With these clarifications and directions, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.



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28.08.2025

Index: Yes/No
Internet: Yes/No
Neutral Citation: Yes/No

To

1. The Tahsildar,
Thirupuvanam Taluk,
Sivagangai District.
2. The Sub-Surveyor,
Konthagai Revenue Village,
Thirupuvanam Taluk,
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S.SOUNTHAR, J.

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Pre-delivery Order in
W.P (MD)No.6107 of 2025



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