

W.P.(MD) No.7929 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:19.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.(MD) No.7929 of 2024

Sankaran

... Petitioner

vs.

The Thasildar,
Trichendur Taluk Office,
Trichendur Taluk,
Thoothukudi District.

... Respondent

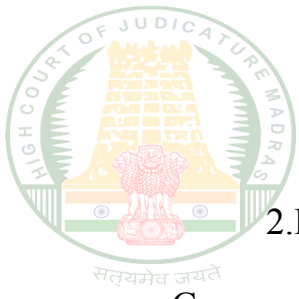
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records in O.Mu.G1/2107/2023, dated 12.08.2023 on the file of the respondent and quash the same as illegal and consequentially direct the respondent to survey the land in S.Nos.82/4 and 582/27 in accordance with decree granted in S.A(MD)No.311 of 2019, dated 23.02.2022 within time frame to be fixed by this Court.

For Petitioner : Mr.S.Kumar

For Respondent : Mr.B.Saravanan
Additional Government Pleader

ORDER

The writ petitioner challenges the impugned order of the respondent rejecting the petitioner's request for survey of lands in S.Nos.82/4 and 582/27.



2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

3. The petitioner's case in the writ petition is that he is the owner of the lands in old Natham S.No.186/1 which corresponds to new S.Nos.582/24, 582/27 and 582/12. The suit was filed in O.S.No.1195 of 1995 on the file of the Additional District Munsif Court, Trichendur, against the District Collector, Tuticorin and Executive Officer, Mutharamman Temple, Kulasekarapattinam, seeking the relief of declaration of title, permanent injunction and mandatory injunction to grant manaivari patta in respect of the above mentioned survey numbers measuring 6.25 cents. The said suit was dismissed by the trial court in and by a Judgment dated 24.09.1999. The petitioner along with his brothers preferred an appeal in A.S.No.13 of 2000 on the file of the Additional District Judge, Thoothukudi and the learned Additional District Judge confirmed the dismissal of the suit by the District Munsif Court, Trichendur and also dismissed the appeal.

4. Aggrieved by the concurrent findings, the petitioner and his brothers filed S.A(MD)No.311 of 2019 before this Court. The said second appeal was allowed in part on 23.02.2022 finding that the plaintiffs, ie., the petitioner herein and his brothers were entitled to a decree for the north-south measurement of 5 $\frac{1}{4}$



carpenter cubic feet and the east-west measurement of 60 carpenter cubic feet in the first schedule property. It is only consequential to the said Judgment of this

Court that the petitioner has made a representation seeking survey by representation dated 24.07.2023. However, without noticing the findings rendered by this Court in the said second appeal, the request for survey has been rejected by the respondent citing that the portion of the property is classified as pathway. The same contention was raised even in the civil litigation, which has attained finality before this Court. In fact, while disposing of the second appeal, this Court has clearly held that though the plaintiffs, including the writ petitioner, had prayed for larger relief, they were certainly entitled to a lesser relief/decreed and restricted the declaratory prayer in respect of north-south $5 \frac{3}{4}$ carpenter cubic feet and east-west 60 carpenter cubic feet. It is only in order to demarcate the said portion of the property that the representation itself has been given subsequent to the disposal of the second appeal. While so, the respondent, without appreciating the purport of the Judgment passed by this Court, has reiterated the defense taken in the suit that S.No.582/27 is classified as a 'street' and therefore rejected the application for survey. The respondent was a party to the civil litigation in O.S.No.1195 of 1995 which culminated in S.A(MD)No.311 of 2019. Therefore, having suffered a part decree in the second appeal, it is not open to the respondent to fall back on the contentions raised in the written statement and contend that part of the property is classified as a pathway. The said issue has been discussed



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by this Court while disposing of the second appeal and what the petitioner seeks is only survey in line with the Judgment of this Court in S.A(MD)No.311 of 2019.

Therefore, the impugned order passed by the respondent is liable to be set aside.

5. Accordingly, this Writ Petition is allowed and the impugned order, dated 12.08.2023 in O.Mu.G1/2107/2023 passed by the respondent is set aside. The respondent shall conduct a survey in line with the findings of this Court in S.A(MD)No.311 of 2019 and pass final orders on the petitioner's application, within a period of six weeks from the date of receipt of a copy of this order. No costs.

19.02.2025

sjj

NCC: Yes/No

Index : Yes / No

Internet : Yes / No

To

The Thasildar,
Trichendur Taluk Office,
Trichendur Taluk,
Thoothukudi District.



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P.B.BALAJI, J.

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