

W.P(MD)No.25127 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.01.2025

PRONOUNCED ON : 21.01.2025

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P(MD)No.25127 of 2018
and W.M.P(MD)Nos.22760 & 22761 of 2018

R.Kalyana Sundaram

... Petitioner

Vs

1.The Commissioner of Municipality,
Kumbakonam Municipality,
Kumbakonam Taluk,
Thanjavur District.

2.The Assistant Director of Survey cum
Personal Assistant to District Collector,
Kumbakonam,
Thanjavur District.

3.The Tahsildar,
Kumbakonam.

4.The Sub-Inspector of Survey,
Kumbakonam Taluk,
Thanjavur District.

5.Savithiri Ammal

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records of the proceedings dated 04.06.2018 of the second respondent and quash the same as arbitrary, illegal and without jurisdiction.



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For Petitioner : Mr.H.Lakshmi Shankar
For R – 1 : Mr.M.Rajarajan
For RR 2 to 4 : Mr.D.Gandhi Raj
Special Government Pleader
For R – 5 : Mr.R.Maheswaran

ORDER

This Writ Petition has been filed challenging the order passed by the second respondent dated 04.06.2018.

2.The property comprised in Survey Nos.811/A and 811/B situated at Kumbakonam Taluk belonged to one Aranmanai Raman Chettiyar Annachathiram Trust. They obtained permission to sell the same in O.S.No.199 of 2002 on the file of the Sub Court, Kumbakonam and sold the property comprised in Survey No.811/A1 in favour of the petitioner by the registered sale deed dated 09.07.2003. Thereafter the revenue records were mutated in the name of the petitioner and he is in possession and enjoyment of the same. While being so, the first respondent was trying to encroach certain portion of the land and as such the petitioner was constrained to file a Writ Petition before this Court in W.P(MD)No. 14010 of 2011. Further, the title of the property was also disputed and as such the petitioner was constrained to file a suit in O.S.No.77

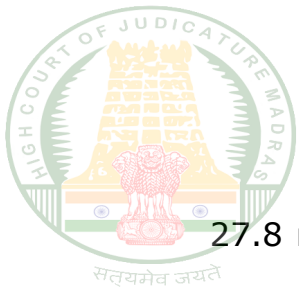


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of 2012 on the file of the Sub Court, Kumbakonam as against the first respondent. While pending suit, the petitioner filed an application seeking appointment of an Advocate Commissioner in I.A.No.117 of 2012. The Advocate Commissioner was appointed and after inspection submitted the report on 23.10.2018 along with the surveyor report. On receipt of the said report, the petitioner came to understand that the impugned order in this Writ Petition was passed by the second respondent on the request made by the fifth respondent. In the said proceedings, the measurement of the petitioner's property comprised in Survey No.811/1A was changed in the Municipal records on the instigation of the fifth respondent whose property is comprised in Survey No.811/1B.

3.While pending the Writ Petition, this Court, by order dated 27.11.2024, directed the third respondent to survey the property with the assistance of the fourth respondent and to file a report.

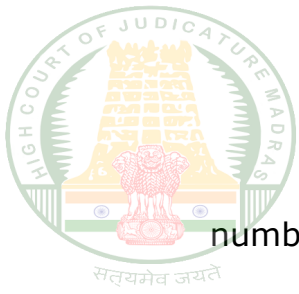
4.On perusal of the report would reveal that in the land comprised in T.S.No.2353 on its upper side T.S.No.811/A1 situated on its northern side measuring 17.7 meters + 10.1 meters in total



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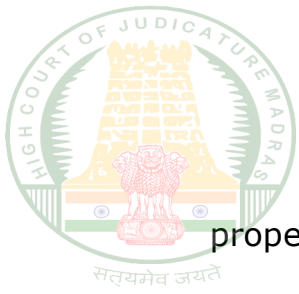
27.8 meters. Whereas as per the document of the fifth respondent, on the northern side, excess land of 3.3 meters is available than the measurement mentioned in the document. Accordingly, 182 square feet is shown in addition to the measurement mentioned in the sale deed. The lower side land comprised in T.S.No.2353 and the property comprised in Survey No.811/B1 are situated admeasuring 13.8 meters + 6.6 meters. In total 20.4 meters. Whereas as per the document produced for the land comprised in Survey No.811/8 on its northern side 78 feet was registered. As per the town survey plan which has been registered as 78 feet, reduced by 3.3 meters out of 23.7 meters and shown as 20.4 meters. As per FMB sketch, the measurement mentioned in the document for the land comprised in T.S.No.811/B1 and B2 on its northern side measurement is less than the measurement shown in the document. Therefore it was wrongly mentioned in the town survey plan.

5.The learned counsel appearing for the petitioner would submit that the survey report is based on the old map of the year 1908 and another new map of the year 2008 has not been substantiated with any authentic record. On the contrary, the survey



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numbers at present is exist ie., Survey No.811/A, 811/B and its new sub divisions were formed after resurvey in the year 1923 (Falsi year 1333) as evidenced by the resurvey settlement register notified on 19.06.1926. The old Survey number is 366A. Therefore, there could not have been an old map of the year 1908 with Survey No.811/A and B as mentioned in the surveyor report. As per the resurvey settlement register Survey No.811/B, the extent of the property admeasuring 5306 square feet. It belonged to Aramanai Raman Chettiar Anna Dhana Chatram Trust. Whereas as per the resurvey plan referring 2008 survey sketch it matches with the extent of 5306 square feet while combining the properties comprised in Survey Nos.811/B1, 811/B2 and 811/B3. It also correlates with revenue records. In fact, the petitioner's vendors filed a suit in O.S.No 86 of 1985 alleging that the fifth respondent is an encroacher of the petitioner's vendor's vendor property comprised in Survey No. 811/B on the file of the Sub Court Kumbakonam for evicting her. It was decreed and also confirmed in the appeal suit in A.S.No.88 of 1988 on the file of the District Court, Thanjavur. However in the Second Appeal in S.A.No.1879 of 1990, it was compromised between the petitioner's vendor and the fifth respondent. The survey report is against the said decree and also against the existing records. Therefore when the total extent of the



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property comprised in Survey No.811/B is only 5306 square feet, as per the compromise the total extent is mentioned as 3640 square feet. That apart, the suit filed by the petitioner was decreed in O.S.No.77 of 2012 as against the fifth respondent herein. Therefore, there is no encroachment on the part of the petitioner.

6.On perusal of the order impugned in this Writ Petition revealed that though the request made by the fifth respondent was rejected till the disposal of the suit in respect of the subject property concluded that the new resurvey plan is wrongly mentioned in the measurement of the subject property. In view of the above, the order impugned cannot be sustained and the same is liable to be quashed. Accordingly, the impugned order dated 04.06.2018 passed by the second respondent is quashed. The respondents 1 to 4 are directed to survey the subject property as per the resurvey settlement register and the old map of the subject property in the presence of the petitioner as well as the fifth respondent and accordingly correct the resurvey plan of the subject property, within a period of eight weeks from the date of receipt of a copy of this order.



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7.With the above direction, this Writ Petition is allowed.

There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

21.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

- 1.The Commissioner of Municipality,
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Kumbakonam Taluk,
Thanjavur District.
- 2.The Assistant Director of Survey cum
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G.K.ILANTHIRAIYAN, J.

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Pre-Delivery Order made in
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