



C.R.P(MD)No.414 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.04.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.414 of 2023

and

C.M.P(MD)No.2034 of 2023

P.Guruswamy

...Revision Petitioner/
Petitioner/Plaintiff

Vs.

1.The Project Director,
National Highways Authority of India (NHAI),
No.314E, K.P.Road,
Near Ayappan Koil,
Parvathipuram, Nagercoil.

2.The Special Tahsildar,
Land Acquisition,
National Highways Authority of India (NHAI),
Vilavancode, Thiruththuvapuram.

3.The District Revenue Officer (Special),
Land Acquisition,
National Highways Authority of India (NHAI)
Tirunelveli, Nagercoil.

4.The District Collector,
Collectorate,
Nagercoil,
Agasteeswaram taluk,
Kanyakumari District.

... Respondents/Respondents/
Defendants



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PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 29.11.2022 passed in I.A.No.4 of 2019 in O.S.No.144 of 2019 on the file of the Additional District Munsif, Padmanabhapuram.

For Petitioner : Mr.M.R.Sreenivasan

For R1 : Mr.Su.Srinivasan

For R2 to R4 : Mr.G.Sivaraja
Government Advocate

ORDER

The petitioner is the plaintiff before the Additional District Munsif Court, Padmanabhapuram, in O.S.No.144 of 2019.

2. The petitioner is aggrieved by the impugned order, dated 29.11.2022 passed by the Additional District Munsif Court, Padmanabhapuram in I.A.No.4 of 2019 in O.S.No.144 of 2019.

3. By the impugned order, the said Court has declined to appoint an Advocate Commissioner on the ground that the petitioner has not established that the petitioner is the owner of the land, the petitioner has not prayed for declaration and that the petitioner is the owner of the area in which the pole has been erected by the respondent. The relevant portion of the order reads as under:



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"பிராது "சி" தபசில் சொத்தில் அமைந்துள்ளதாக கூறப்படும் மின் கம்பத்தை அகற்ற வேண்டுமென்றும் அதனால் ஆணையரை நியமனம் செய்து மேற்படி சொத்தை பார்வையிட்டு அறிக்கை மற்றும் வரைபடம் தாக்கல் செய்ய வேண்டிய வகைக்காக இம்மனு தாக்கல் செய்யப்பட்டுள்ளது. மேற்படி சூழ்நிலையில் பிராது "சி" தபசில் சொத்தில் நடப்பட்டுள்ள மின் கம்பத்தை அகற்ற வேண்டுமென்று கோரிக்கை விடுக்கும் அதேசமயத்தில் மேற்படி பிராது "சி" தபசில் சொத்தானது மனுதாரா/வாதிக்குத்தான் உரிமை பட்டதா என்று முடிவு செய்தால் தான் மேற்படி சொத்தில் நடப்பட்டுள்ள மின்கம்பத்தை அகற்ற உத்தரவிடமுடியும். மாறாக, பிராது "சி" தபசில் சொத்தானது மனுதாரா/வாதிக்கு உரிமைப்பட்டது அல்ல என முடிவு செய்யும் பட்சத்தில் மேற்படி மின்கம்பத்தை அகற்ற வேண்டிய அவசியம் இல்லை. எனவே, பிராது "சி" தபசில் சொத்தானது மனுதாரா/வாதிக்கு தான் உரிமைப்பட்டதா என்று முடிவு செய்ய கூடிய பரிகாரத்தை அசல் வழக்கில் கோராத நிலையில் இம்மனுவில் ஆணையரை நியமனம் செய்வது தேவையில்லாத ஒன்று ஆகும் என இந்நீதிமன்றம் கருதுகிறது."

4. It is the specific case of the petitioner that he is the owner of 29 cents of land, out of which, 8 cents of land were acquired by the respondents. It is further submitted that the respondents have also paid compensation for acquiring 8 cents of land. After acquiring 8 cents of land, the respondents have erected a Heavy Duty Electric Pole in the balance 21 cents of land and therefore, the petitioner was constrained to file the above said suit for mandatory injunction.

5. It is the further case of the petitioner that the respondents remained *ex parte* before the Trial Court. Under those circumstances, the



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petitioner has filed I.A.No.4 of 2019 for appointment of an Advocate Commissioner to give a report under Order XXVI Rule 9 of C.P.C. It is submitted that the Trial Court has committed a grave error in rejecting the application stating that the petitioner has not filed the suit for declaration.

6. The learned counsel for the petitioner submits that as admittedly, the land belongs to the petitioner and there is no dispute regarding the same. There is no question of the petitioner filing the suit for declaration to move an application under Order XXVI Rule 9 of C.P.C. for appointment of an Advocate Commissioner.

7. The learned counsel for the first respondent submits that the extent of 425 square feet was acquired from the petitioner and another extent from the neighboring area belonging to one Karunakaran. It is submitted that the land acquired from the petitioner and the respondent has also paid a sum of Rs.8,37,928/- in terms of award, dated 18.11.2021 in Modification Award No.6/20115-53. Similarly, a sum of Rs.1,08,603/- has been paid to the said Karunakaran. It is submitted that the pole which has been erected in the acquired land was not the land which was



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acquired by the petitioner.

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8. I have considered the arguments advanced by the learned counsel for the petitioner.

9. It is well settled principle of law that ordinarily where the suit is filed for mandatory injunction, the question of appointing an Advocate Commissioner to inspect the property is not allowed, as it would amount to collection of evidence.

10. There is no dispute regarding the ownership of the land that has been left out with the petitioner after acquiring the land by the respondent for the national highway project. The only issue that arises for consideration is whether the pole has been erected is within the area acquired by the respondent or in the area, which has been left out of 21 cents of the land of the plaintiff. In my view, Advocate Commissioner can be appointed to inspect the property in presence of the revenue officials to give report as to whether the pole has which has been erected is within the area acquired or outside the land which belongs to the petitioner.



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11. It is noticed that the suit is of the year 2019. According to the learned counsel for the petitioner, the respondents have remained *ex parte*.

12. Considering the above, the Trial Court is directed to expedite the disposal of the suit within a period of six months from the date of receipt of a copy of this order.

13. This Civil Revision Petition stands allowed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

10.04.2023

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

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To

1.The Additional District Munsif,
Padmanabhapuram.

2.The Section Officer
Vernacular Section,



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Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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