

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.03.2016

Date of Reserving the Order	Date of Pronouncing the Order
17.03.2016	21.03.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.Nos.20193 & 20194 of 2015

1.D.Chandrasekaran

2.D.Arul Gnanaraj ... Petitioners in W.P.No.20193/2015

R.Saroja ... Petitioner in W.P.No.20194/2015

Vs

1.The District Collector,
Erode District,
Erode - 638 011.

2.The Divisional Engineer,
Highways Department,
Erode - 638 001.

3.The Manager,
Southern Railways,
Erode Junction,
Salem Division,
Erode - 638 001.

सत्यमेव जयते Respondents in both W.Ps.

Prayer in W.P.No.20193 of 2015 :- Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order made in Na.Ka.No.38973/2012/A1, dated 01.06.2015, passed by the first respondent, quash the same and consequently forbear the respondents from in any way interfering with the petitioners' right to property measuring an extent of 3600 sq.ft., comprised in R.S.No.823/2, corresponding to old S.F.No.1028/B, Erode Village, Erode District till the compliance of the procedure laid down for acquisition or requisition or any other permissible statutory mode.

Prayer in W.P.No.20194 of 2015 :- Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the records relating to the impugned order made in Na.Ka.No.38973/2012/A1, dated 01.06.2015, passed by the first respondent, quash the same and consequently forbear the respondents from in any way interfering with the petitioner's right to property measuring an extent of 1800 sq.ft., comprised in R.S.No.823/2, corresponding to old S.F.No.1028/B, Erode Village, Erode District till the compliance of the procedure laid down for acquisition or requisition or any other permissible statutory mode.

For petitioner .. Mr.N.Manokaran

For Respondents .. Mr.R.Rajeswaran Spl.G.P., for RR1&2
Mr.A.P.Srinivas for R3

C O M M O N O R D E R

Having regard to the commonality of the relief sought for in both the Writ Petitions, they were heard together and disposed of by this common order.

2. The petitioners seek for issuance of a Writ of Certiorarified Mandamus, to quash the proceedings of the District Collector, Erode dated 01.06.2015 and to forbear the respondents from interfering with the petitioners' right to the subject property, till compliance of the procedure laid down for acquisition of the property.

3. Heard Mr.N.Manokaran, learned counsel appearing for the petitioner, Mr.R.Rajeswaran, learned Special Government Pleader appearing for the respondents 1 and 2 and Mr.A.P.Srinivas, learned counsel appearing for the third respondent/Southern Region.

4. This is a second round of litigation commenced by the petitioners, the earlier being in W.P.Nos.31102 of 2014 and 31099 of 2014, which were heard tagged along with other connected matters, wherein identical relief was sought for. In those Writ Petitions, the petitioners sought for issuance of a Writ of Mandamus to forbear the respondents from in any way interfering with their rights over the subject property till the compliance of the procedure laid down for acquisition. In fact, the prayer sought for in the earlier Writ Petitions is identical to the second limb of the prayer in these Writ Petitions.

5. The petitioners claim to be owners of the property having purchased the same from one Subramani and they have constructed

superstructure on the property and while so, the respondents attempted to dispossess them stating that the property is a Railway land and therefore, they have approached this Court. The third respondent/Southern Railway submitted that the lands in question are all Railway lands and the petitioners' alleged vendor had absolutely no right over the property and could not have conveyed the property to the petitioners.

6. It was pointed out by the learned counsel for the Southern Railway that in the representation given by the petitioners, they have admitted that their vendor suppressed the fact that the property is a Railway property and sold the same to the petitioners and they have been cheated. In these Writ petitions also, the petitioners would admit that criminal complaints have been filed against the vendor and the same are pending. During the relevant point of time, when those Writ Petitions were heard, the District Collector was seized off the matter and he had called for certain particulars from the Railway Administration.

7. Taking note of the said factual position, the Writ Petitions were disposed of by order dated 06.01.2015, directing the District Collector to consider the petitioners' representation, call for the relevant records from the Railways as well the Highways Department, examine the matter and take a final decision by passing a reasoned order on merits and in accordance with law. Till such orders were to be passed, the status-quo which was prevailing as on the said date, was directed to be maintained. Pursuant thereto, the impugned order has been passed.

8. The impugned order is a reasoned order and the District Collector has assigned reasons as to why the petitioners claims are to be rejected. One among the petitioners would contend that the land which has been purchased is comprised in R.S.No.823/2, corresponding to Old S.F.No.1028/B and they have constructed a house by availing housing loan, property tax has been remitted etc. Similarly the other petitioners would also rely upon the correlation between the old and new survey number assigned to the property in question. This position became clear, when this Court elaborately heard the learned counsel for the Petitioner and the learned counsel for the respondents, during the hearing on 28.01.2016. Thus, the issue involved in the case had fallen into a very narrow compass and the Court passed the following order on 28.01.2016, so that the Writ Petitions could be decided on this sole issue. The order reads as follows:-

After hearing the learned counsels at length, short issue which falls for consideration to decide the correctness of the impugned order is as to when the 'A' Register in

respect of Survey No.823/1, equivalent to Old S.No.1028/13 had been shown as "Sarkar Poramboke" and stated to be a railway track was carried out, at whose instance the correction was effected and the proceedings which were issued prior to effecting correction in the 'A' Register. If it is substantiated to the satisfaction of this Court that correction was bonafide and valid, then the petitioner may not have a good case to argue further.

2. Therefore, learned Special Government Pleader is directed to produce original records and supportive documents to establish the correctness effected in the 'A' Register.

Post on 17.02.2016.

9. The above order was passed in the light of the fact that the petitioners placed reliance on the extract of the 'A' Register pertaining to S.F.No.1028 and pointed out that the owner of the land has been mentioned as one R.Palani Goundan. However, with regard to the 'A' Register of S.F.No.823, an insertion has been made to show as if the land is a Government Poramboke land, though the person in occupation is stated to be Palani Goundan. Thus, the contention of the petitioner is that the land purchased by them falls in S.F.No.823/2 and this correspondence to Old Survey No.1028/B. Therefore, the respondents had to place material before this Court to establish as to whether the case of the petitioners as projected is correct.

10. The learned counsel for the third respondent/Southern Railway placed for consideration of this Court, the copy of the Award bearing Award No.1/1976, dated 12.01.1976, relating to land acquisition proceedings for the Railways in Erode Taluk for doubling the Railway Track between Erode and Uthukuli Railway Stations. In the tabulated statement given in the award, the corresponding new Resurvey number for old Survey No.1028/B, is R.S.No.823/1. The said lands were owned by the several persons and two persons whose name finds place in page 4 of the award namely, K.Mehabujan Beevi and Amira Beevi Ammal through whom the petitioners trace title are shown to be co-owners of the land in R.S.No.823/1, along with several others. Their name features in page 14 of the award also. In page 17 of the award, it is stated that the lands covered under the award were sub-divided wherever necessary and the area computed by Divisional Head Surveyor has been adopted in the award and the sub-divisions of the survey fields sanctioned were noted in a tabulated form. From the said tabulated statement, it is seen that R.S.No.823, has been sub-divided as 823/1, measuring an extent of 3.84 and the classification of the land is "Southern Railway". The other sub-division namely, 823/2, measuring 2.11 has been shown as "Patta". The extent which is now occupied by the petitioner

undoubtedly falls within the Survey No.823/1, and this is not only evident from the award proceedings, but also the Field Map Sketch prepared by a Deputy Surveyor.

11. Thus, the issue which was framed by this Court for consideration during the previous hearing has been clearly answered by the third respondent/Southern Railway. The sketch prepared by the Surveyor, Erode along with Senior Section Engineer (P.way), Southern Railway, Erode, shows that S.F.No.823/2B, is of private patta land, the remaining extent of 823/1, is Railway land and the petitioners have encroached an extent of 3784sq.ft., and 2180sq.ft., respectively and these are all small pockets where the encroachment is found. The petitioners have not been able to rebut these documents and therefore, it is held that the respondents have been able to establish that the petitioners are encroachers on Railway property.

12. Hence, for all the above reasons there is no error in the impugned order and no other issue is required to be considered in the light of the order passed by this Court on 28.01.2016, during which hearing, the issue to be considered was narrowed down and agreed to by the parties. Thus, it is clear that the correction in the revenue entries, is on account of the land acquisition proceedings which culminated in passing of the award dated 12.01.1976.

13. Hence, for all the above reasons, the petitioners have not made out any case for interference. Accordingly, the Writ Petitions fail and they are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

pbn

To

1.The District Collector,
Erode District,
Erode - 638 011.

2.The Divisional Engineer,
Highways Department,
Erode - 638 001.

3.The Manager,
Southern Railways,
Erode Junction,
Salem Division,
Erode - 638 001.

1 cc to Mr.A. P. Srinivas, Advocate, Sr. 18252
2 ccs to Mr.N. Manoharan, Advocate, Sr. 17961, 17962

W.P.Nos.20193 & 20194 of 2015

TEJ (CO)
kk 29/3



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