

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.No.35305 of 2015

Dr.R.Selvarajan

.. Petitioner

Vs.

- 1.The District Collector,
Coimbatore.
- 2.The Deputy Chief Engineer,
Construction, Southern Railway,
Podanur,
Coimbatore.
- 3.The Tahsildar,
Kinathukadavu.
- 4.Savitri
- 5.Mallikamani
- 6.Jothimani
- 7.Ranganathan
- 8.Rajalakshmi

.. Respondents

This writ petition has been filed, under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents 2 and 3 to complete the work of laying the connecting road for a width of 4 meters and length of 16 meters, in S.No.371B/1 and 371B/2, as per the order of the first respondent, dated 21.7.2015 and 25.9.2015, connecting the railway under pass with the Coimbatore-Pollachi National Highway.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.R.Ravichandran,
AGP for RR1 and 3

Mr.P.T.Ramkumar,
Standing Counsel for Railways - R-2
Mr.S.Navaneethakrishnan for RR4 to 8

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ORDER

Heard.

2 The petitioner has stated that he, along with one Nataraj, S/o.Krishnasamy, owns an extent of 9 acres and 63 cents of land, in S.Nos.371A and 372A, at Mettupalayam village, Pollachi Taluk, Coimbatore District. In the entire extent of the land, in the said survey numbers, there is a coconut thope. On the eastern side of the said lands, a railway line runs, from Dindigul to Coimbatore. On the eastern side of the said railway line, there is a land, in S.No.371B, which had belonged to one Ramasamy. At present, the land belongs to his legal heirs, who are respondents 4 to 8 herein.

3 It has been further stated that, when the railway line was a meter gauge line, there was an unmanned level crossing, between Pole Nos.131/12 and 131/13, through which the petitioner had a right of way, extending into the land, in S.No.371B, to reach Pollachi - Coimbatore National Highway. There was a well laid cart track, measuring 15 feet in width, running East to West, in the land, in S.No.371B, through which the petitioner and certain others had been transporting their yield from the coconut trees, in S.No.371A.

4 It has been further stated that during the year, 2010, the meter gauge railway line had been converted into a broad gauge line. Therefore, an under carriage pass had been built, by the railways, to enable the petitioner and others to reach their lands, in S.No.371A, through the cart track in S.No.371B. Though the under carriage work had been completed, the railway authorities did not form the connecting link road. Therefore, the petitioner had submitted several representations to the respondents 1 to 3, in the writ petition. The District Collector, Coimbatore, the first respondent herein, by her proceedings, dated 21.7.2015, had directed the Tahsildar, Kinathakaduvu, the third respondent in the present writ petition, to peg mark the area and to assist the railway officials in the laying of the road, in S.No.371B. However, no action had been taken by the railway officials, in spite of several reminders having been sent to them. The railways officials had claimed that the respondents 4 to 8 are obstructing them, from laying the road. In such circumstances, the petitioner, who is undergoing serious hardship in using the under pass, through the land in S.No.371B, has preferred the present writ petition, before this Court, under Article 226 of the Constitution of India.

5 Mr.R.Subramanian, the learned counsel appearing on behalf of the petitioner had contended that, from the sale deeds, dated 7.2.1977, 8.2.1977 and 19.3.1977, it is clear that there was a cart track in S.No.371B, which the petitioner and certain others had been using, for transporting their agricultural goods, to reach the Pollachi - Coimbatore National Highway, on the eastern side of the railway line. Thus, it is clear that the petitioner had a right of easement by grant, to use the cart track in question. He had further contended that the ownership of the respondents 4 to 8 herein, in respect of the land in S.No.371B, is subject to the rights of the petitioner to use the cart track through the said land. The right of the petitioner to use the cart track in the land, in S.No.371B, has been admitted by the respondents 4 to 8 herein.

6 The learned counsel had further submitted that none of the letters issued by the District Collector, Coimbatore, the first respondent herein, dated 21.7.2015, 24.8.2015, 18.9.2015 and 25.9.2015, directing the authorities concerned, to complete the works relating to the under pass and the cart track in the land, in S.No.371B, had been challenged by the respondents 4 to 8 herein.

7 Per contra, the learned counsel appearing on behalf of the respondents 4 to 8 had submitted that the claim of the petitioner for laying the road, claimed to be a cart track, through the land belonging to them, in S.No.371B, is ill-founded. He had further submitted that the cart track, mentioned by the petitioner, in the land in S.No.371B, cannot be converted into a pucca road, by building culverts and the other constructions, to connect the under pass to the Pollachi - Coimbatore National Highway, on the eastern side of the railway line. If such constructions are made, by the railways, it would adversely affect the respondents 4 to 8 herein, from using their land in S.No.371B, for their agricultural activities.

8 The learned counsel had further submitted that if the petitioner has to seek a relief relating to his easementary right, as claimed by him, through the land belonging to the respondents 4 to 8, he could do so, by approaching the appropriate civil court, in the manner known to law. Such a relief, especially, when disputed facts are involved, cannot be granted by this court, by way of issuing a Writ of Mandamus, as prayed for by the petitioner, in the present writ petition.

9 The learned counsel appearing on behalf of the respondents 1 and 3 had placed before this Court the relevant revenue records relating to the land in S.No.371B. He had further submitted that no such cart track, as claimed by the petitioner, is noted in the said records.

10 The learned counsel appearing on behalf of the second respondent had submitted that the railway authorities are not in a position to lay the road and to put up the constructions in the land, in S.No.371B, belonging to the respondents 4 to 8, due to the obstructions caused by them. The railway authorities did not have any right to lay any road or put up the constructions, in a portion of the land, which falls outside the land owned by the railways. Therefore, the directions issued by the District Collector, Coimbatore, the first respondent herein, could not be followed.

11 In view of the submissions made by the learned counsel appearing on behalf of the petitioner and the learned counsels appearing on behalf of the respondents, this Court is of the view that the relief prayed for by the petitioner, in the present writ petition, cannot be granted. The petitioner has claimed certain easementary rights through the land in S.No.371B, said to be belonging to the respondents 4 to 8 herein. There are certain disputed issues of fact, with regard to the existing cart track, on the eastern side of the railway line, through the land in S.No.371B, said to have been used by the petitioner and certain others, to reach the Pollachi - Coimbatore National Highway.

12 From the perusal of the revenue records placed before this Court, by the learned counsel appearing on behalf of the respondents 1 and 3, it could be noted that the existence of the cart track has not been marked in the said records. Further, when the petitioner claims certain easementary rights to use the cart track, through the land, in S.No.371B, said to be belonging to the respondents 4 to 8 herein, by way of certain sale deeds, it is for the petitioner to seek his reliefs, if any, relating to the said issue, before the appropriate civil forum, in the manner known to law. It is not open to the petitioner to seek such reliefs, especially when the disputed issues, relating to certain facts, had arisen between the petitioner and the respondents 4 to 8 herein, by way of a writ petition, filed before this Court, under Article 226 of the Constitution of India. In such circumstances, this Court finds it appropriate to dismiss the writ petition. Hence, the writ petition stands dismissed. No costs. However, it goes without saying that it may be open to the petitioner to seek his reliefs, if any, before the appropriate civil forum, if so advised, in the manner known to law.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The District Collector,
Coimbatore.

2.The Tahsildar,
Kinathukadavu.

+1 cc to Mr.R.Subramanian Advocate sr 42738
+1 cc to Mr.S.Navaneethakrishnan Advocate sr 42838
+1 cc to Mr.P.T.Ramkumar Advocate sr 42943
+1 cc to Government Pleader sr 42753

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