

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. Nos.13794 and 13795 of 2003

G. Sathyamurthy Petitioner in W.P. No.13794 of 2003

T. Guruswamy Petitioner in W.P. No.13795 of 2003

vs.

1 The Collector, Vellore District

2 The Block Development Officer
Arakkonam Town
Vellore District - 631 001

3 M. George, Chairman
Arakkonam Panchayat Union
Arakkonam Town
Vellore District

4 The President
Kavanoor Panchayat
Arakkonam Taluk
Vellore District

Respondents in both the Wps

W.P. No.13794 of 2003:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus forbearing the respondents from encroaching upon the petitioner's lands in Survey Nos.214/27, 214/28,215/21 measuring an extent of 0.014 hectares in Kavanoor Narasingapuram Village, Arakonam Taluk, Vellore District and forming a road in the petitioner's land.

W.P. No.13795 of 2003:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus forbearing the respondents from encroaching upon the petitioner's lands in Survey Nos.216/7, 217/1, Kavanoor Narasingapuram Village, Arakonam Taluk, Vellore District and for forming a road in the petitioner's land.

For petitioners in : Mr.Ramachandran
both the WPs for Mrs.Beula Rajakumari

For R2 in : Mr. P. Karthikeyan
both the WPs Govt. Advocate

COMMON ORDER

These writ petitions are filed seeking a writ of mandamus forbearing the respondents from encroaching upon the petitioners' lands in Kavanoor Narasingapuram Village, Arakkonam Taluk, Vellore District and forming a road in their land.

2 It is the case of Sathyamurthy (petitioner in W.P. No.17394 of 2003) and Guruswamy (petitioner in W.P. No.17395 of 2003) that the lands in Survey Nos.214/27, 214/28, 215/21, 216/7 and 217/1 in Kavanoor Narasingapuram Village, Arakkonam Taluk, Vellore District, are patta lands inherited by them and are admittedly in their enjoyment. It is their specific case that on 21.04.2003, Mr.Vamanan, Block Development Officer, Arakkonam, along with Panchayat Union Engineer and others, came with a heavy machinery like poclain and started laying road on their lands without their consent and permission. Their protest fell on deaf ears. Hence, they filed the present writ petitions for a mandamus forbearing the respondents from illegally laying road on their lands.

3 On 30.04.2003, at the time of admission, this Court had granted interim injunction in favour of the petitioners and the same was made absolute on 01.09.2003 after hearing both sides.

4 Mr. Vamanan, Block Development Officer, Arakkonam, has filed counter affidavit, wherein, he has admitted that the lands in question belong to the petitioners. But, it is his contention that the petitioners and other villagers had agreed to permit the authorities to lay road on their lands and in those circumstances, the respondents had cleared the bushes and thorn trees for the purpose of laying road. It may be relevant to extract paragraph no.3 of the counter affidavit as under:

"3. I submit that on 21.04.2003, the second respondent the Panchayat Union Engineer, the Panchayat Union Chairman, Kavanoor Panchayat Union Ward Councillor and other officials went to the working spot. A small meeting among the pattadars in whose lands the road work is going on, was arranged and the Block Development Officer and Chairman requested to give their lands for forming road work. All the land

owners accepted to form the road of 10 feet instead of existing mud road of width of 6 feet which is not useful for 4 wheelers. The petitioner also accepted orally. Hence, 10 feet road is formed. In that action only, the thorn trees and bushes which causing more inconvenience to the users were removed and only the leaning branches of few mango trees were affected. The work formation of gravel road had been executed only to cater the high felt need of the publics and for the public utility only and not for creation of any other benefit to any other individual."

5 In the considered opinion of this Court, it is not open to the authorities to acquire a person's land in such a high-handed manner and lay road on the ground that majority of the villagers did not raise any objection. Though right to property is not a fundamental right, yet, under Article 300-A of the Constitution of India, it is a constitutional right which has to be recognised and the same can be deprived of only in the manner known to law by initiating proper acquisition proceedings and not otherwise.

In the result, these writ petitions are allowed as prayed for. In the event of the authorities wanting to lay a road, it is always open to them to initiate acquisition proceedings in the manner known to law. No costs.

sd/
Assistant Registrar

/true copy/

Sub Assistant Registrar

gms
To

- 1 The Collector
Vellore District
- 2 The Block Development Officer
Arakkonam Town
Vellore District - 631 001
- 3 The Chairman
Arakkonam Panchayat Union
Arakkonam Town
Vellore District

4 The President
Kavanoor Panchayat
Arakkonam Taluk
Vellore District.

Common order in
W.P. Nos.13794 and 13795 of 2003

LRS (CO)
GN(15/02/2017)



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