

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P.No.27790 of 2013
and
M.P.Nos.1 & 2 of 2013

A.R.Murugasamy

... Petitioner

..Vs..

1.The District Collector,
Coimbatore District,
Coimbatore.

2.The Block Development Officer (Village Panchayats)
Annur Panchayat Union,
Coimbatore District.

3.The President,
Otterpalayam Panchayat,
Kurikkilampalayam,
Annur Taluk
Coimbatore & District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus forbearing the respondents from laying a new road by leveling the Pallavari (rain water drain) adjoining the petitioner's land in G.S.No.58 in Otterpalayam Village, Annur Taluk, Coimbatore District.

For Petitioner : Mr.S.Sathia Chandran

For Respondents : Mr.A.N.Thambidurai,
Spl. G.p., for R1

: Mrs.A.Sri Jayanthi,
Spl. G.P., for R2

: Mr.P.M.N.BhagavathKrishnan,
Adv. Commissioner, for R3

O R D E R

This writ petition has been filed seeking a direction to the respondents not to lay a new road, thereby encroaching the rain water drainage adjoining to the petitioner's land in Pallavari in Otterpalayam village, Annur Taluk, Coimbatore District.

2. The grievance of the petitioner is that the petitioner is having agricultural land in S.R.Nos.57/1, 57/2, 57/3, 57/5, 59/2 in Otterpalayam village. In the above patta lands, there is a cart track, which has been used by the villagers, which run through the petitioner's land. Now the respondents 2 and 3 are taking steps to lay a new road for a length of 700 meters, out of which 400 meters run on the pallavari rain water drainage. The Pallavari canal is a rain water drain canal, from Kurikilayampalayam pond, where from the excess rain water is drained through the Pallavari canal to Annur Pond. If the same is leveled and the road is laid, the rain water would seep into the petitioner's agricultural lands and it will affect the petitioner's agricultural land. Hence, the present writ petition has been filed.

3. The third respondent filed a counter affidavit stating that the panchayat has proposed to lay a new road measuring about 700 meters in Ayigoundenpudhur village for public purpose. The third respondent after considering the requirement, approved the proposal for laying road and NABARD, has granted a sum of Rs.68 lakhs for the improvement of the road, which connects Sirumugai road via Annur, Mettupalayam road, Jeeva nagar, Oddarpalayam, Ayigoundanpudur and Pooluvapalayam. When the second and third respondents commenced the work, the petitioner has given his objection in writing to stop the work. In view of his objection, the work could not be commenced. Subsequently, a meeting has been called for to form the road amicably. In the meeting one Mr.R.Selvaraj and Mrs.Angathal have come forward to gift their lands measuring 6295 Sq.ft., by way of gift deed for the purpose of forming the new road. The proposed road is being formed in S.Nos.67,68 and 53. The petitioner's land has no connection with the present lands, in which the new road is proposed to be formed. The proposed road does not pass through Pallavari drainage canal and the same will not be affected in any manner, and the road passes only on the gifted land in Survey Nos.67, 68 and 53. All the aspects has been taken into consideration while forming a new road. The petitioner's allegations are not maintainable, and by forming the new road, the petitioner's patta land will not be affected in any way and the water flow from the nearby lakes will not cause any disaster to the agricultural lands since the new road will not affect the free flow of river water from one lake to another.

4. Since there is a dispute regarding the formation of road, this Court appointed an Advocate Commissioner to inspect the land and file a report. Pursuant to the same, the Advocate Commissioner has inspected the land and filed a detailed report regarding the physical features. The findings of the Advocate Commissioner reads as follows:

"Finding :

(i) There is an existing drain like structure adjacent to the petitioner's land.

(ii) This drain like structure in Sy.No.68 and 53.

(iii) As stated in para 6.1 and 6.8, it is seen that the proposed construction of the road will encroach into some portions of the drain like structure thereby reducing its width in certain areas"

The above report was objected by the counsel appearing for the third respondent stating that they are no way going to encroach the water panel and the report of the Commissioner is not correct. Hence, once again the Commissioner was directed to inspect the place and file additional report. Pursuant to the same, the Commissioner also filed a further report on 05.09.2018, wherein it was stated as follows :

" xvii) As seen from the above table, the width of the existing katcha road is not enough for laying the proposed road. An additional area is required for the proposed road. The additional area will run into the drain-like structure in Sy.No.68 and Sy No.53. The area of possible encroachment into the drain-like structure has been coloured in 'red'in sketch no.3.

xviii) It is submitted that in the earlier report, the undersigned had found that there will be a possible encroachment of 4 mtrs in the southern-end of Sy No.68 because the Assistant Engineer had stated that a width of 10 mtrs in total is required for laying a tar road. It is now informed by the Assistant Engineer that width of 7.5 mtrs will suffice for laying a Tar Road."

However, the learned counsel appearing for the respondent submitted that they are only going to form a road in the existing road, if at all another area is needed they will use the land gifted by the third respondent. At any rate they will not encroach the water panel and the second respondent also filed an affidavit to that effect, which reads as follows : -

"I respectfully submit that I have gone through the report. I hereby undertake that we

will lay the Thar Road in the place which is in existence, if at all the panchayat needs any additional place for laying the road we will confine to the land which

the villagers gifted already or in the Government Land only.

Hence, I request the Hon'ble Court may kindly record the above para and pass orders and thus render justice; to complete the Thar Road for the General Public. I also undertake that we will not touch the land of the petitioner under any circumstances."

In view of the undertaking given by the second respondent that they will not encroach the water drainage channel and they will only lay a road in the existing road, and if at all they want to additional place they will confine with the land which was gifted by the villagers. No further order is necessary in the writ petition. It is made clear that if the respondents violate the undertaking, it is always open to the petitioner to take appropriate action.

5. Since the petitioner has already paid the remuneration to the Advocate Commissioner, the respondents 2 and 3 are directed to pay the balance remuneration to the Advocate Commissioner within a period of two weeks from the date of receipt of a copy of this order.

6. With these observations, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mrp/mbi

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2.The Block Development Officer (Village Panchayats)
Annur Panchayat Union,
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3.The President,
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+1 cc to M/s.Sri Jayanthi, Advocate Sr.No.69247
+1 cc to The Government Pleader, SR.No.70169

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CP (CO)
CSL/03.12.2018



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