

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.02.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

W.P.No.9182 of 2016
and
W.M.P.No.8187 of 2016

Craigmore Plantations (India) Pvt.Ltd.
Represented by its
Deputy General Manager,
Kullakamby, Coonoor,
Nilgiris District.

...Petitioner

Versus

Tasildhar,
Conoor Taluk,
Conoor,
Nilgiris District.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the respondent dated 01.03.2016 in Na.Ka.No.A2/3485/2015 and quash the same.

For Petitioner : Mr. B. Kumar,
Senior Counsel for
Mr.S.Ramachandran
For Respondent : Mr. Akhil Akbar Ali,
Government Advocate

सतयमेव जयते
O R D E R

The minimum facts required to appreciate the controversy raised in this case may be stated as below:

- The petitioner is a private limited company that owns a vast extent of estate land measuring around 2291.6 acres comprised in Adigaratti II Village, Hulical I village, Melur I village, Melur II Village and Melur III Village. As said lands are used for plantation of tea and for its purposes, the petitioner has laid metal and unmetal roads specially around the entire estate, and according to the petitioner, they are essentially utilized only by the staffs of the estate and strictly for purposes connected with the activities of the estate. While so, the Panchayat President and that his hench men attempted to interfere with the private character of the said road and were insisting that the road is thrown open for the public.
- The petitioner was therefore constrained to install two gates at the two entrances of the road. While so,

the Revenue Divisional Officer Vide his proceedings in No.Na.Ka.A1.No.2387/2015, dated 22.07.2015, issued a show-cause notice, purportedly under Section 133-A Cr.P.C and finally directed that the gates are removed. Challenging the same, the petitioner has moved this Court in Crl.R.C.No.892 of 2016 in which an interim Order of stay of operation of the aforesaid RDO's order was passed. The Stay was in progress.

- Be that as it may, the respondent has issued a notice dated 01.03.2016 to enter upon the petitioner's property to measure it, whereunder he refers to a direction by the First Bench of this Court in W.P.No.3671 of 2016 dated 19.11.2015 as well as the provisions of Tamil Nadu Requisitioning and Acquisition of Immovable Property Act, 1956.

The petitioner challenges the said notice issued by the respondent, primarily on the competency in the respondent to invoke the powers under the Tamil Nadu Highways Act, 2001 and Tamil Nadu Requisitioning and Acquisition of Immovable Property Act, 1956.

2. In the three paged counter affidavit, the respondent in essence, seeks to justify the notice issued by the respondent tracing the same to the order of the First Bench in W.P.No.36716 of 2015. However, as to the legality touching on the competency for invoking the powers under the Tamil Nadu Highways Act, 2001 and Tamil Nadu Requisitioning and Acquisition of Immovable Property Act, 1956, the counter is silent.

3. Heard Mr.B.Kumar, the learned Senior Counsel for the petitioner and Mr.Akhil Akbar Ali, the learned Government Advocate appearing for the respondent.

4. The learned counsel for the petitioner submitted that under Section 2-B of the Tamil Nadu Requisitioning and Acquisition of Immovable Property Act, 1956, Competent Authority is defined to mean any person or authority authorized by the Government, by notification, to perform the functions of the Competent Authority whereas as per Sections 2(21) read with Section 5(9) (2) of the Tamil Nadu Highways Act, Highways Authorities is defined as the Divisional Engineer, Highways Department of the Government in charge of the Division. In order the legality of the impugned notice can be sustained by the respondent, the respondent ought to demonstrate that he has either been notified as the Competent Authority within the definition of 2-B of Tamil Nadu Requisitioning and Acquisition of Immovable Property Act, 1956, or is the Highways Authority within the meaning of Section Tamil Nadu Highways Act. He added so far as the Highways Department is concerned, the Act itself is categorical and only the Divisional Engineer is the Highway Authority and by no stretch of interpretation a Tahsildhar, can constitute as the Divisional Engineer. He concluded his submission with a statement that the Crl.R.C.892 of 2015 referred to above has

5. As referred to earlier, when this issue was pointedly raised in the grounds of challenge in the petition, the respondent responded the same with silence. The respondent, who authored the notice now impugned before this Court has not chosen to demonstrate the source of his powers before this Court to issue it, or cared to justify his competency to do it. When the Statute prescribes where and on whom the power or authority shall vest, and also designates the authority who shall perform any acts contemplated by it, it is not given to any other authority to get excited and over enthusiastic, and attempt to arrogate to himself such powers that are not statutorily available to him. It is not about the nobility of the intention behind such acts that matters, but is about the legality of what he does. It is here, the impugned notice is caught in a web of illegality as the respondent has not demonstrated that he was the notified authority under Tamil Nadu Requisitioning and Acquisition of Immovable Property Act, 1956. And, he is not the Divisional Engineer in order he could perform such acts earmarked only for the Divisional Engineer under Tamil Nadu Highways Act. Necessarily, any notice that he has issued by invoking the provisions of any of the said two Acts has to be declared as incompetent.

6. To conclude, this Court allowed this Writ Petition and the impugned order passed by the respondent dated 01.03.2016 in Na.Ka.No.A2/3485/2015 is hereby quashed. No costs. Consequently, connected Miscellaneous Petition is closed.

mrr

Sd/-
Assistant Registrar(Cs III)

//True Copy//

Sub Assistant Registrar

To
Tasildhar,
Conoor Taluk,
Conoor,
Nilgiris District.

+1cc to Mr.S.Ramachandran, Advocate Sr.No.10469

KK(CO)
sm:19.3.2018

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