

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.09.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P.No.14692 of 2003

Munisamy Naicker

... Petitioner

Vs.

1.The Assistant Director of
Village Panchayat
Kanchipuram District.

2.The Executive Officer
Kattarampakkam Village Panchayat
Sumathirambedu, Pennalur Post
Sriperumbudur Taluk
Kanchipuram District.

3.The President
Kattarambakkam Village Panchayat
Sumathirambedu, Pennalur Post
Sriperumbudur Taluk
Kanchipuram District.

.... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue of Writ of Mandamus forbearing the respondents from acquiring petitioner's land bearing Survey No.329/14 at Irungattukottai Revenue Village.

For petitioner : Mr.C.K.M.Appaji

For respondents : Mr.G.B.Rajesh,
Government Advocate for R1

ORDER

The prayer sought for herein is for a Writ of Mandamus forbearing the respondents from acquiring petitioner's land bearing Survey No.329/14 at Irungattukottai Revenue Village.

2. The grievance of the petitioner is that, the land in Survey No.329/14 at Irungattukottai Revenue Village, Sriperumbudur Taluk measuring about 7 cents is being encroached by the second and third respondents viz., the Village Panchayat, for the purpose of laying and broadening of road to the cemetery.

3. In this regard, the learned counsel for the petitioner would submit that, since, it is a patta land and the petitioner is the owner of the land, it cannot be encroached upon by the second and third respondents Village Panchayat even for the public purpose namely, laying or broadening the road. Though, it is the right of the Government to initiate process under the Land Acquisition Act, to acquire the land, without adopting any such legal procedure contemplated under law, the second and third respondents Panchayat passed a resolution to take away the land of the petitioner for the purpose of broadening or laying the road and visited the subject land on 02.05.2003 with the officials. Without considering the documentary evidence adduced by the petitioner, the second and third respondents attempted to encroach upon the petitioner's property and only in that context, the petitioner had approached this Court with the aforesaid prayer.

4. Heard Mr.C.K.M.Appaji, learned counsel appearing for the petitioner and Mr.G.B.Rajesh, learned Government Advocate appearing for the first respondent.

5. Learned Government Advocate appearing for the first respondent would submit that, if the subject land is a private land or a patta land belongs to the petitioner, certainly, the respondents cannot have any right to encroach the property.

6. At the same time, if the land is essential for public purpose i.e for laying or broadening the road towards burial ground or cemetery, certainly, the Government, should initiate proceedings under the Land Acquisition Act and accordingly, the necessary land can be acquired from the petitioner or others by processing the land acquisition proceedings under law, except the said way of acquiring the land, the respondents can never forcibly evict the petitioner.

7. I have considered the said submissions made by the learned counsel for the petitioner as well as the learned Government Advocate appearing for the first respondent and also perused the materials placed before this court.

8. The land in question is admittedly a patta land belongs to the petitioner and the same cannot be encroached upon by the respondents without the authority of law, may be for laying of road, which is one of the essential requirement for the Public purpose in that locality, for which, the respondents can acquire the land, but not encroach upon the private land without the authority of law. Therefore, the alleged attempt said to have been made by the respondents on 02.05.2003, as rightly stated by the petitioner, in the affidavit filed in support of the petition, cannot be permitted.

9. In view of the above, the writ petition is disposed of with the following directions:

"The respondents are restrained from either interfering or encroaching upon the subject land i.e land of 7 cents situated at Survey No.329/14, Irungattukottai Revenue Village, Sriperumbudur Taluk, by forcible entry or from attempting to evict the petitioner for any purpose, including the purpose of laying the road. However, it is open to the respondents to initiate acquisition proceedings, in the manner known to law and in that case, it is for the petitioner to face the same, in the manner known to law."

No costs.

msv

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

- 1.The Assistant Director of
Village Panchayat
Kanchipuram District.
- 2.The Executive Officer
Kattarampakkam Village Panchayat
Sumathirambedu, Pennalur Post
Sriperumbudur Taluk
Kanchipuram District.
- 3.The President
Kattarambakkam Village Panchayat
Sumathirambedu, Pennalur Post
Sriperumbudur Taluk
Kanchipuram District.

+lcc to Mr.C.K.M.Appaji, Advocate S.R.No.64535

+lcc to the Government Pleader, S.R.No.64558

KR/2/11/18

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