



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2018

CORAM:

WEB COPY

THE HONOURABLE Mr. JUSTICE V.BHARATHIDASAN

W.P. (MD) No.18075 of 2017
and
W.M.P. (MD) No.14529 of 2017

K.Nambirajan

... Petitioner

-Vs-

1. The District Collector,
District Collector Office,
Pudukottai District.
2. The Deputy Director (Village Panchayats),
District Collector Office,
Pudukottai District.
3. The Block Development Officer,
Gandarvakkottai Taluk,
Pudukottai District.
4. The Commissioner,
Panchayat Union Office,
Gandarvakkottai Town & Taluk,
Pudukottai District.
5. M.Kavitha

... Respondents

(R5 is impleaded vide Court order dated 21.03.2018 in W.M.P. (MD) No.5658 of 2018)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents 1 to 4 to abstain from laying road at the petitioner's property comprised in S.Nos.218/6 and 218/7 in contravention of the concession recorded in the Judgment and Decree dated 30.07.2008 made in O.S.No.151 of 2007 on the file of the District Munsif Court, Pudukottai.

For Petitioner : Mr.K.Maniyarasu
For R1 to R3 : Mr.Chellapandian,
Additional Advocate General,
assisted by Mr.M.Rajarajan, G.A.
For R4 : Mr.G.Muthukannan
For R5 : Mrs.Mahalakshmi

**ORDER**

This writ petition has been filed, seeking a direction to the respondents 1 to 4 to abstain from laying road in the petitioner's property comprised in Survey Nos.218/6 and 218/7.

2.The grievance of the petitioner is that the property comprising in Survey Nos.218/6 and 218/7 originally belongs to one Govinda Udayar and Karuppaiah. The petitioner is the son of the said Karuppaiah, and the said property was subsequently allotted to the petitioner's father by way of partition. Thereafter, the petitioner's father was in possession and enjoyment of the property. Subsequently, on 02.03.2005, the said Karuppaiah executed a sale deed in favour of the petitioner. Ever since the date of purchase, the petitioner has been in possession and enjoyment of the property and mutation of revenue records have also been made in his favour. While so, in the month of February, 2007, the fourth respondent Commissioner had proposed to lay a thar road between Mudukulam to Pudhunagar through the petitioner land. Since the road has been laid for public purpose, the petitioner has agreed for laying the said road on the Southern side of his property comprising in Survey Nos.218/6 and 218/7, and also gave his consent. Now, the grievance of the petitioner is that violating the consent given by the petitioner, the respondents are laying road in the middle of his property.

3. It is further stated by the petitioner that in the mean time, he has filed a suit in O.S.No.151 of 2007 before the District Munsif Court, Pudukottai, seeking for permanent injunction against the respondents 1 and 4 from interfering with his possession and enjoyment of the property in question. In the said suit, the fourth respondent has filed a written statement, admitting that the petitioner has given a consent only for laying road on the Southern side of his property. The Trial Court recording the consent given by the petitioner disposed of the suit, directing the respondents 1 and 4 to lay the road as per the consent given by the petitioner. Thereafter, all of a sudden, on 13.09.2017, the fourth respondent has taken steps to lay road as per the original proposal i.e., in the middle of the petitioner's land, which is in violation of the decree passed in O.S.No.151 of 2007. Immediately, the petitioner approached the respondents and resisted for formation of the road. But without considering his request, the respondents proposed to lay the road. In these circumstances, the petitioner is before this Court with this writ petition.

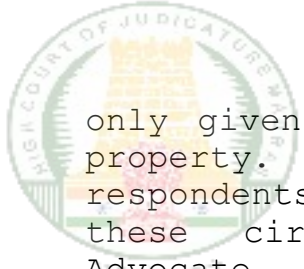
4.Earlier, this Court ordered notice to the respondents. When the matter was taken up for hearing the petitioner filed an impleading petition to implead one Kavitha, who is also claiming right over the property, as a party respondent in this writ petition. The impleading petition was allowed and that she was impleaded as 5th respondent.



5. The third respondent / Block Development Officer, Taluk, filed a detailed counter affidavit, stating that the property in dispute originally registered in the name of the petitioner. Considering the request made by the public, the existing road from Mudukulam to Pudunagar which passes through several patta lands has been proposed to be upgraded as "thar" road at the estimated cost of Rs.36.80 lakhs in the year 2007. The said road is passing through the above two survey numbers. Considering the importance of the road, all the land owners came forward to donate their lands at free of cost, and the petitioner has also given consent to form the road on the left margin of his land. Thereafter, the petitioner filed a suit in O.S.No.151 of 2017 before the District Munsif Court, Pudukottai, seeking permanent injunction, restraining the respondents from forming the said road. The Trial Court dismissed the suit, after recording the submission of the petitioner that he had no objection to form the road on the South - North portion of his property. But the road could not be formed due to a dispute regarding title over the property between the petitioner and the 5th respondent. The petitioner has already instituted another civil suit in O.S.No.234 of 2007 before the District Munsif Court, Pudukottai, seeking declaration of his title for the above said property. But the said suit was dismissed by the Trial Court on 30.11.2010. Thereafter, challenging the said decree and judgment, the petitioner filed an appeal in A.S.No.77 of 2012 before the Sub Court, Pudukottai, and the same was allowed and the suit was remanded to the Trial Court. Now, challenging the order of remand, the 5th respondent filed a Civil Miscellaneous Appeal in C.M.A.(MD) No.1481 of 2013 before this Court, and the matter is still pending.

6. The 5th respondent also filed a counter affidavit stating that the above two survey numbers belong to her by way of a registered sale deed dated 17.05.2001 executed by one Rangaraj, and she has already given a consent to the respondents 3 and 4 to lay a road across her land in Survey No.281/7, and she does not have any objection for laying the road across her land. It is further stated in the counter affidavit that the petitioner also filed O.S.No.234 of 2007 on the file of the Principal District Munsif Court, Pudukottai against the 5th respondent, and her vendor / Rangaraj and her father-in-law for declaration of title and consequential permanent injunction and the suit was dismissed by the Trial Court on 30.11.2010 and on an appeal filed by the petitioner in A.S.No.77 of 2012, the learned Sub Judge, Pudukottai, set aside the judgement and decree of the trial court and remanded the suit for fresh consideration. Challenging the order, the 5th respondent filed an appeal in C.M.A.1481 of 2013 before this Court and the same is pending. According to the 5th respondent, the petitioner has no right over the property, and he is not in possession and enjoyment of the same.

7. Earlier, when the matter was taken up for hearing, the learned counsel for the petitioner contended that the petitioner has



only given consent to form the road on the Southern side of the property. Despite the same, in violation of his consent, the respondents are laying new road in the middle of the property. In these circumstances, this Court appointed Mr. Periyakaruppan, Advocate, as Advocate Commissioner to inspect the property, and file a report. Pursuant to the same, the Advocate Commissioner also inspected the property in the presence of the petitioner and the respondent and filed a report. The relevant portion of the report reads as follows:-

"5.I respectfully submit that, during the course of commissioning in the disputed properties the existing this area find out as follows:-

(i) The land comprised in S.F.No.218/6 and 218/7 are punja land and the cashew nut trees are stands in that land.

(ii) A metal road was runs in the southern side of S.F.No.218/6 and left turn in the same survey number and touch the 218/1A1C (land belongs to Duraisamy & others) and thereafter the metal road was turn right side and runs through north edge of S.F.No.218/1A7, 218/7 and 218/1A1C. For that effect a rough sketch was enclosed along with this commissioner report and existing metal road is marked in green colour.

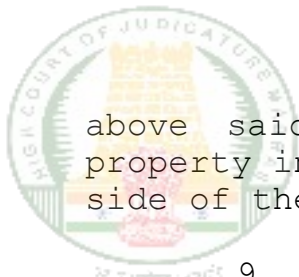
(iii) The local body authorities stored blue metals and Thar for laying the metal road in the existing road.

(iv) No such Thar Road was laid by the authorities till the inspection time.

(v) The metal road runs through the private patta lands and the same has not been shown in the revenue records.

(vi) The local authorities have not acquired the land for formation of the road, except undertaking given by the petitioner before the Hon'ble Civil Court.

(vii) The above said road is not running in middle of the petitioner's property situated in S.F.No.218/6, but the above said metal road runs through in northern side in S.F.No.218/7."



above said road is not running in middle of the petitioner's property in Survey No.218/6. But the same runs through the Northern side of the Survey No.218/7.

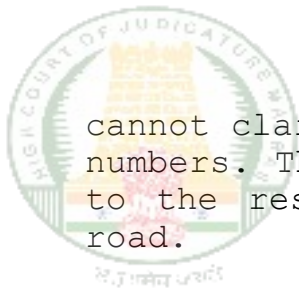
9. The learned counsel for the petitioner contented that even though there is a title dispute between the petitioner and the 5th respondent, the respondents cannot lay road in the disputed land, without initiating any acquisition proceedings, and without paying any compensation to the land owners. Apart from that already the petitioner has given consent only to lay the road on the Southern end of his land and based on such undertaking, the Trial Court also dismissed the suit in O.S.151 of 2007 filed by the petitioner. Now, in violation of the above decree, the respondents are taking steps to lay the road in the middle of the petitioner's land.

10. Per contra, the learned counsel for the 5th respondent submitted that the 5th respondent has purchased the property as early as on 17.05.2001 from the original owner of the property. Subsequent to that the petitioner's father executed a settlement deed in favour of the petitioner. Now, a civil suit in O.S.No.234 of 2007 filed by the petitioner is also pending before the Principal District Munsif, Pudukkottai against the 5th respondent and her vendor and also her father-in-law. In such circumstances, the petitioner cannot claim exclusive right over the property, apart from that the petitioner has also given consent for laying the road in the disputed property.

11. The learned counsel for the official respondents contented that they are not laying any new road in the disputed property. But only in the existing road, they are laying thar road in the interest of the general public. Since the civil suits are pending between the petitioner and the 5th respondent, the petitioner is not entitled to claim exclusive right over the property and the 5th respondent has already given consent for laying road.

12. I have heard the submissions made by the learned counsel on either sides, and perused the materials available on record carefully.

13. This writ petition has been filed by the petitioner, claiming exclusive title over the property, without disclosing the fact that there is a title dispute between the petitioner and the 5th respondent and a suit has already been filed by him and that the matter is now pending in an appeal in C.M.A.(MD)No.1481 of 2013 before this Court. Now, the 5th respondent also claims right over the property by virtue of a sale deed dated 17.05.2001, and she is claiming that she is in possession and enjoyment of the property right from the date of the said sale deed. In such circumstances, unless the dispute regarding the title between the petitioner and the 5th respondent is decided by the Civil Court, the petitioner



cannot claim exclusive ownership of the land in the above two survey numbers. That apart, now, the 5th respondent has also given consent to the respondents 3 and 4 for laying thar road in the existing road.

14. It is the contention of the petitioner that the consent given by the petitioner is only for laying road on the Southern part of the land, instead of that the respondents forming a new road in the middle of the property. But, the report filed by the Advocate Commissioner, would go to show that the respondents are only making improvements on the existing road which runs through the Northern side of the Survey No.218/7 and not in the middle of petitioner's property in Survey No.218/6 as claimed by him.

15. In such circumstances, it is clear that in view of the civil dispute pending between the petitioner and the 5th respondent and the said road being laid based on the consent given by the petitioner as well as the 5th respondent, the petitioner cannot seek to prevent the official respondents from improving the existing road.

16. The formation of the road is very much essential, as 1500 families reside at Mudukulam Village without any basic amenities and that Primary Health Centre, Veterinary Dispensary, Government High School and Bank are located only at Pudu Nagar and to reach the above said Village, and people have to travel 7 kms in a circuitous road.

17. Apart from that from a perusal of the records, it could be seen that the road has been laid only after obtaining consent from the respective land owners, including the petitioner as well as the 5th respondent. Now after giving consent for forming a road, it is not open to the petitioner to contend that the respondents have not initiated land acquisition proceedings to acquire the land for forming the road. Hence, I find no merit in this writ petition and the same is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
<https://hcservices.ecourts.gov.in/hcservices/>
District Collector Office,
Pudukottai District.



2. The Deputy Director (Village Panchayats),
District Collector
Office, Pudukottai District.

3. The Block Development Officer,
Gandarvakkottai Taluk,
Pudukottai District.

+ 1 CC TO Mr.K.C.MANIYARASU, ADVOCATE IN SR No. 57036
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 57599

MYR

TE/KKR/SAR-1 : 23/04/2018 : 7P/6C

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21.03.2018