

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28/01/2020

DATED : 14.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No. 110 of 2020

A.Owthi Jain

... Petitioner

...Vs...

1. The District Collector
District Collector Office
Tiruppur District.
2. District Revenue Officer
Near L.R.G College
Opposite R.M. Industrial Complex
Palladam Road
Tirupur -4.
3. Revenue Divisional Officer
Dharapuram Kangeyam Erode Road
Udumalpet
4. The Tahsildar
Madathukulam
Tamil Nadu.
5. Assistant Engineer
Construction and Maintenance
Highways Department,
Madathukulam Taluk.
6. Assistant Divisional Engineer
Construction and Maintenance
Highways Department
Madathukulam

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to quash the impugned order dated 15.11.2019 bearing

No.Na.Ka.199/2018-A-1 passed by the sixth respondent herein and directing him to grant permission to lay down the underground pipeline by cutting the road comprised in S.F.No. 779 in keeping with the letter dated 04.01.2019 issued by the sixth respondent.

For Petitioners : Mr.S.Prasath
for M/s. Sarvabhauman Associates

For Respondents :: Mr. Inbanathan
Additional Government Pleader

ORDER

The Writ Petition has been filed in the nature of Certiorarified Mandamus, to quash the impugned order dated 15.11.2019 passed by the sixth respondent, namely, Assistant Divisional Engineer, Construction and Maintenance, Highways Department, Madathukulam and direct the sixth respondent to grant permission to lay down underground pipeline by cutting the road in S.F.No. 779 in keeping with the letter dated 04.01.2019 issued by the sixth respondent.

2. The petitioner claims that he is the owner of agricultural land in S.F.No. 812/2, West Komaralingam Village, Madathukulam Taluk, Kaniyur Sub-Registration District, Tiruppur District, measuring 3.26 acres. He also owns further agricultural land in S.F.No. 650/1 also in the same village measuring 2.23.50 hectares. It is stated that there is a road which runs in between the two parcels of lands in S.F.No. 812/2 and S.F.No. 650/1. The petitioner claims that he has been cultivating crops like coconut, maize, etc., in S.F.No. 650/1. He depends on canal irrigation for water supply. Since there is no water, the crops have dried. He also states that there is in the land in S.F.No. 812/2 there is a Well. Therefore, he wants to lay underground pipeline from the Well in S.F.No. 812/2 to the agricultural land in S.F.No. 650/1. He filed an Application for obtaining sanction from the fourth respondent, namely, The Tahsildar, Madathukulam, Tamil Nadu, for laying underground pipeline. The fourth respondent inspected the property and examined the documents and stated that the length of the underground pipeline would be 150 mts and would pass through a cart track situated in S.F.No. 779 and patta lands in S.F.No. 812 and 812/1B. He also observed that the owners of the land, who objected, have lands situated 3 kms away. The fourth respondent finally endorsed to the third respondent, namely, Revenue Divisional Officer, Dharapuram Kangayam Erode Road, Udumalpet that permission can be granted. A representation was also given to the sixth respondent. The sixth respondent stated that the Highways Department will issue a no objection

certificate if necessary documents and certificates are issued by the third respondent and produced by the petitioner. The fourth respondent, namely, The Tahsildar, Madathukulam, Tamil Nadu, sent another letter dated 18.01.2019 to the third respondent stating again that permission can be granted. In pursuance of the said letters, the third respondent also addressed the first respondent, namely, the District Collector, District Collector Office, Tiruppur District that permission can be granted. The second respondent, namely, District Revenue Officer, Tirupur, had also passed an order dated 18.10.2019 stating that permission can be granted. The fourth respondent also passed necessary orders. However, the sixth respondent refused to grant permission to lay underground pipeline by cutting the road stating that the same would cause leakage and affect the nature of the road. Questioning that order, the present Writ Petition has been filed.

3. Heard Mr.S.Prasath, learned counsel for the petitioner and Mr. Inbanathan, learned Additional Government Pleader, who took notice on behalf of the respondents.

4. The writ petitioner questions the order of the sixth respondent, namely, Assistant Divisional Engineer, Construction and Maintenance, Highways Department, Madathukulam, who had refused to grant permission to the petitioner to lay underground pipeline from his land in S.No. 812/2 to the other portion of agricultural land in S.No. 650/1. The petitioner states that in S.F.No. 650/1, he had put up agricultural crops like, coconut, maize, etc. It is further stated by him that since there is lack of water supply and since there is a Well in his own land at S.No. 812/2, he proposes to lay underground pipeline cutting across the road to an extent of 150 mts. In this distance, there is a mud road of 130 mts and Highway Department Road for 20 mts.

5. According to the petitioner, the fourth respondent, namely, the Tahsildar, Madathukulam, Tamil Nadu, had examined the lay of the land and also the documents of the petitioner and had recommended that the petitioner be granted permission to lay the underground pipeline. This report was forwarded to the third respondent, namely, Revenue Divisional Officer, Dharapuram Kangayam Erode Road, Udumalpet, and also to the sixth respondent. The Revenue Divisional Officer also examined the lay of the land and also accorded permission. This was also forwarded to the second respondent. It is stated that the second respondent thereafter issued a direction to the fourth respondent to grant permission for cutting the road in S.F.No. 779 to lay down the underground pipeline for a distance of 150 mts. Several conditions were also imposed. The said conditions are as follows:-

"1. Tahsildar, Paladam should maintain a record of permission relating to laying down of pipeline and sub-division of road. This record should be inspected one in 6 months by the RDO, Udumalpet.

2. All the Road tax and other local taxes regarding cutting of the roads shall be paid within stipulated time for every fasili year. (The above said road tax is fixed by Government G.O.No. 1002 dated 02.12.1993)

3. All the conditions specified in Revenue NILAIYAANAI No.24(A) should be strictly followed.

4. If the rules laid down for cutting the road are violated, this permission will be revoked.

5. Renewal of license to cut the road can be done by applying three months prior from the date of expiry of the license.

6. No objection certificated should be obtained from all the necessary department concerned.

7. The other conditions that are to be followed are:

* New pipeline should not be laid down without any prior approval.

* The length of the pipeline cannot be extended or shortened without prior approval.

8. The water from the well in S.F.No. 812/2 in Komalingam West Village, Madathukulam Taluk, Tiruppur District shall be used only for agricultural purposes. This water should not be sold or used for any other purposes. If there is any violation, the license for cutting road will be cancelled without any prior

notice.”

6. The fourth respondent also passed an order on 21.10.2019 granting permission to the petitioner to lay underground pipeline for the purpose of water supply from the Well in S.F.No. 812/2 to his agricultural land in S.F.No. 650/1. Conditions were also laid down. They are follows:-

“1. The permission to cut the road is valid for a period of 5 years from 18.10.2024 to 17.10.2024.

2. All the road tax and other local taxes regarding cutting of the roads shall be paid within stipulated time for every fasili year without fail.

3. All the conditions specified in Revenue NILAIYAANAI No.24(A) should be strictly followed.

4. If the rules laid down for cutting the road are violated, this permission will be revoked.

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cut the road will be cancelled without any prior notice."

7. However, the sixth respondent had refused to grant permission. The sixth respondent is the Highways Department. The petitioner claims that a promissory estoppel has arisen that since the State authorities have granted permission, there is an obligation placed on the sixth respondent to also grant permission. It is stated that the Doctrine of promissory estoppel can be applied as against the Government also. The petitioner also enclosed a report by Coat Shield, a Company which is said to be an expert in the field of waterproofing to show that the PVC pipe proposed to be laid is best suitable for prevention of leakage. It is also stated that the proposed pipeline is the only source of water to the land in S.F.No. 650/1.

8. However, a perusal of the impugned order shows that the Chief Engineer of the Highways Department by his proceedings dated 06.08.2019 and the Regional Engineer, in his proceedings dated 21.08.2019 have specifically stated that laying underground pipelines for agricultural purpose by private individuals would affect the lay of the road and also would cause leakage of water and therefore, have stated that permission should not be granted. Under these circumstances, the sixth respondent refused to grant permission.

9. The conditions put forth by the second and fourth respondents extracted above can extend only up to the mud road. However, there is a 20 ft., Highway road which also has to be cut open for laying the underground pipeline.

10. Section 45 of the Tamil Nadu Highways Act, 2001 is as follows:-

"Section 45 - Consent of Highways Authority required to certain acts on highways.-

(1) Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of section 70, no person, other than the Highways Authority or any person authorised by it, shall construct or carry any cable, wire, pipe, drain sewer or channel of any kind through, across, under or over any highway, except with the permission in writing of the Highways Authority.

(2) In giving the consent, the Highways Authority may impose such conditions as it may deem to be necessary and may also impose a rent or other charge for any land forming part of the highway occupied by or applied to the proposed work.

(3) If any person constructs or carries out any work in contravention of sub-section (1), the Highways Authority may arrange for the removal of such work and restoration of the highway to its former condition as if the work constituted an encroachment on the highway, and such expenses as the Highways Authority may incur for this purpose shall, without prejudice to any other action that may be taken against such person, be recovered from him in accordance with the procedure provided in Section 29, in so far as that procedure is applicable."

11. When the Chief Engineer of the Highways Department had specifically prohibited grant of permission for such purposes in proceedings No. Ku.No.10928/ஒப்பந்தம் 2/2019 dated 06.08.2019, there is an obligation placed on the petitioner to question that particular order. The order of the sixth respondent is only a consequential order to the directions given by the Chief Engineer.

12. When a policy decision has been taken that underground pipeline cutting across the Highways cannot be granted for private persons for agricultural purposes or for any other purpose, that order will have to be first challenged by the petitioner. Overlooking that order, the sixth respondent cannot grant permission to the petitioner.

13. The provision of law extracted above is very clear. The Highways Department has complete control over the Highways road and the petitioner cannot claim laying an underground pipeline, for whatever purpose is his fundamental right.

14. In view of all these facts, even though the learned counsel for the petitioner stated that the order of the Chief Engineer should be examined on a case to case basis, this Court cannot come to the rescue of the Writ Petitioner. The Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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