

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2020

CORAM

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

WP.No.9670 of 2020
and
WMP.No.11789 of 2020

A.Sheik Mohammed Sathik,
S/o.C.Abdul Ravoof,
3-A, Kumudam Nagar,
Thiyagaduram,
Kallakurichi District. .. Petitioner

- Vs -

1. The District Collector,
Kallakurichi District,
Kallakurichi.
2. The Block Development Officer,
Thiyagadurgam, Kallakurichi District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, forbearing the respondents from illegally laying a road over the agricultural lands in Survey No.134/7, Periyampattu Village, Kallakurichi District, belonging to the petitioner herein.

For Petitioner : Mr.Govind Chandrasekhar

For Respondents : Mr.E.Balamurugan
Spl. Govt. Pleader

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O R D E R

This writ petition has been filed for the issue of writ of Mandamus forbearing the respondent from illegally laying any road over the agricultural land in Survey No.134/7, Periyampattu Village, Kallakurichi District.

2. The case of the petitioner is that he is the owner of the property in Survey No.134/7. In the year 2018, the respondents had mooted a proposal to lay a road and an attempt was made to

lay the road across the property belonging to the petitioner. The petitioner raised objections. The grievance of the petitioner is that in spite of the objection raised by the petitioner, the respondents are proceeding to take steps to lay the road across the property belonging to the petitioner. Hence, the present writ petition has been filed before this Court seeking for appropriate direction.

3. The respondents have filed a counter affidavit. The relevant portions in the counter affidavit is extracted hereunder:-

'4. It is further most humbly submit that, as far as the averments stated in the para No.2 of the petitioner's affidavit, this respondent is not aware of OS.529 of 2011 pending before the District Munsif court, Kallakurichi since this respondent is not a party in that suit.

5. It is further most humbly submitted that, as far as the averments stated in the para no.3 to 6 of the petitioner's affidavit, it is denied that this respondent is not laid any road on the petitioner's agricultural land. Already there are existing road from Chinnamampattu to Iyyanarpalayam Road and from K.K.Road to Koothakudi Pudu Colony Road.

6. It is further most humbly submits that the surrounding Villagers had given a grievance petition before the 1st respondent that the above said existing road from Chinnamampattu to Iyyanarpalayam Road and from K.K.Road to Koothakudi Pudu Colony Road were in damaged condition and requested the 1st respondent to improve the said roads.

7. It is further most humbly submits that based on the representations made by the surrounding Villagers the 1st respondent had issued Notifiation under "'Scheme Component of Pooled Assigned Revenue'" (SCPAR) Scheme for the year 2016-2017 and conducted bid on 17.10.2017 and work order has been issued to the successful bidder M/s.Shri.Subam constitutions, having office at No.33A, Nepal Street, Kallakurichi Distrcit in RCOP.No.B3/1513/2017 dated 20.10.2017 to made improvement in the said existing road from Chinnamampattu to Iyyanarpalayam Road and from K.K.Road to Koothakudi Pudu Colony Road, and the

work has been completed by the contractor.

8. It is further most humbly submits that in the view of the affidavit filed by writ petitioner in para no.2 it is found that the Suit for declaration of title in respect of the property situated at S.No.134/7 of Periyampattu Village is pending before the District Munsif Court, Kallakurichi in O.S.No.529 of 2011. Hence this Writ petitioner will not claim him to be the absolute owner of the said property.

Hene, this respondent is not illegally laid any road over the agricultural lands in Survey No.134/7, Periyampattu Village, Kallakurichi District, belonging to the petitioner, on the other hand improvement of existing road from Chinnampattu to Iyyanarpalayam Road and from K.K.Road to Koothakudi Pudu Colony Road has been laid under ''Scheme Component of Pooled Assigned Revenue'' (SCPAR) Scheme for the year 2016-2017 under the notification of the 1st respondent in RCOP.No.B3/1513/2017 dated 20.10.2017, is valid in law. Therefore, in the interest of justice it is just and necessary that this Hon'ble Court may be pleased to dismiss the above writ petition and thus render justice.''

4. A categoric stand has been taken by the second respondent to the effect that the road is not laid over the agricultural land in Survey No.134/7. This stand has been reiterated at least in three places in the counter affidavit.

5. The learned counsel for the petitioner submitted that even though such a plea has been taken in the counter affidavit, during the pendency of this writ petition, the respondents have proceeded to lay the road across the property belonging to the petitioner. The learned counsel submitted that the respondents cannot take over a private property without following the due process of law and without paying any compensation. The learned counsel further submitted that the act of the respondents clearly amounts to trespass into the property belonging to the petitioner and therefore, the road that has been laid in the agricultural land belonging to the petitioner should be directed to be removed in view of the specific stand taken in the counter affidavit.

6. Per contra, Mr.E.Balamurugan, learned Special Government Pleader appearing on behalf of the respondents apart from reiterating the stand taken in the counter affidavit, submitted

that there was an existing road and the same was in a very bad shape and therefore, based on the complaint given by the villagers, a new road was laid over the existing road and there was no attempt to lay the road across the property belonging to the petitioner.

7. This Court has carefully considered the submissions made on either side and the materials available on records.

8. Right to property is now recognised as a constitutional right under Article 300A of the Constitution of India. Deprivation of property within the meaning of Article 300A must take place in accordance with law. Acquiring a land without compensation amounts to depriving the constitutional right of the owner of the land. The Hon'ble Supreme Court has gone to the extent of saying that right to property is not only a Constitutional right, but also a human right and depriving a person of his property without resorting to due procedure would violate human rights under Article 21 of the Constitution of India. Useful reference can be made to the case of Lachhman Dass Vs. Jagat Ram and others reported in 2007 10 SCC 448. This position was also reiterated by the Hon'ble Supreme Court in the case of Mathew Varghese Vs.M.Amrita Kumar and others reported in AIR 2015 SC 50.

9. The latest judgment of the Hon'ble Supreme Court in this regard is in the case of Vidya Devi Vs. The State of Himachal Pradesh and others reported in 2020 3 LW 538. In this judgment, the Hon'ble Supreme Court reiterated the position that the cause of action is continuous and the owner of the land cannot be deprived of the right just because he approaches the Court at a belated stage.

10. In view of the above settled position, the right of the petitioner over the property situated in Survey No.134/7 cannot be deprived by the respondents unless otherwise by due process of law. The respondents have taken a very clear stand that the road has not been laid over Survey no.134/7. The petitioner claims that the road has been laid across his agricultural land in survey no.134/7.

11. In view of the above controversy, there shall be a direction to the first respondent to engage the services of the Tahsildar and conduct the survey over the property. If during survey, any portion of the road is laid in Survey No.134/7, Periyampattu Village, Kallakurichi District and the same is identified, the said portion of the road shall be removed/obliterated. This process shall be completed within a period of four(4) weeks from the date of receipt of a copy of this order. It is made clear that if in case, the respondents

intend to acquire the property of the petitioner in Survey no.134/7, this order will not come in their way to undertake such a process. However, till the said process is undertaken, the petitioner cannot be deprived of his right over the property and that is the reason why the above direction is issued by this Court.

12. This writ petition is disposed of with the above directions. No Costs. Consequently, Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

1. The District Collector,
Kallakurichi District,
Kallakurichi.
2. The Block Development Officer,
Thiyagadurgam,
Kallakurichi District.

+1cc to M/s.Govind Chandrasekhar, Advocate, Sr.No.27988

+1cc to the Government Pleader, Sr.No.28156

WP.No.9670 of 2020

and

WMP.No.11789 of 2020

vsn ii (co)

rr ii (16/09/2020)

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