

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.13934 of 2020
and W.M.P.No.17313 of 2020

A.Ponnuswamy,
Son of Thiyaagi K.Anganna Thevar.

...Petitioner

Vs.

1. The District Collector,
Office of the District Collectorate,
Coimbatore 641 018.

2. The Thasildar,
Sulur Thasildar Office,
Coimbatore District 641 402.

3. The Executive Officer,
Irugur Town Panchayat,
Irugur, Coimbatore 641 103.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for records relating to the order bearing Na.Ka.No.745/2019/A1 dt. 20.02.2020 made by the 3rd respondent and to quash the same and consequently, forbear the 3rd respondent unauthorizedly and permanently using the road in the petitioner's private lands comprised in S.Nos.317/3, 320/2 situated at Irugur Village, Coimbatore District and measuring nearly about 75 cents.

For Petitioner : Mr.G.Prabhakar.

For Respondents : Mr.E.Balamurugan,
Special Government Pleader.

ORDER

On consent given by either side, the main writ petition itself has been taken up for final hearing.

2.This writ petition has been filed challenging the impugned proceedings of the 3rd respondent dated 20.02.2020, wherein the 3rd respondent has rejected the request made by the petitioner, who was seeking for payment of compensation on the ground that

his property situated at S.No.317/3 and 320/2 at Irugur Village, Coimbatore, are being utilized to lay a pucca road and the general public are permitted to use the same.

3.Heard Mr.G.Prabhakar, learned counsel appearing on behalf of the petitioner and Mr.E.Balamurugan, learned Government Advocate, appearing on behalf of the respondents.

4.A careful perusal of the materials placed on record shows that the lands comprised in S.Nos.317/3 and 320/2 at Irugur Village, Coimbatore District, originally belonged to the father of the petitioner. After his demise, the petitioner has succeeded to the said property. These lands used to be a mud pathway and the father of the petitioner and the petitioner were allowing the general public to use the same. The grievance of the petitioner is that the 3rd respondent has now taken control of the entire property which is an extent of 11 cents and a thar road has been laid for the entire extent and thereby effectively has taken away the property of the petitioner.

5.The petitioner has made a representation / complaint in this regard on 05.02.2020 seeking for compensation. The 3rd respondent has rejected the claim made by the petitioner, only on the ground that this property has been utilized by the general public as a pathway for a long period of time and therefore no compensation is payable to the petitioner.

6.There is no dispute with regard to the fact that the subject property is owned by the petitioner. The title is traced from the year 1958 onwards. Even though right to property is no more a fundamental right, the fact remains that it is a constitutional right guaranteed under Article 300-A of the Constitution of India. This Article makes it clear that no person can be deprived of his property save by authority of law. The Constitutional Bench of the Hon'ble Supreme Court in the case of Rajiv Sarin and Another Vs. State of Uttarakhand and others reported in 2011 8 SCC 708 has held that where a private property is put to use for public purpose, even if the statute does not provide for a compensation, the owner of the property is entitled for a compensation and he cannot be deprived of his property illegally. The Hon'ble Supreme Court in the subsequent judgment in the case of Tukaram Kana Joshi and others Vs. M.I.D.C and others reported in 2012 8 MLJ 515 has further held that acquiring a land without compensation amounts to deprivation of property and delay or laches cannot be made as a ground to deprive the land owner to seek for compensation and such a right was recognized as a continuous cause of action.

7.It will also be more beneficial to take note of the judgment of the Hon'ble Supreme Court in the case of Lachhman

Dass Vs. Jagat Ram and Others reported in 2007 10 SCC 448, wherein the 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 right to property without resorting to due procedure would violate Human Rights under Article 21 of the Constitution of India.

8.It is clear from the above, that the petitioner cannot be deprived of the compensation since his property has been taken under the control of the Panchayat and a thar road has been laid and the petitioner has been deprived of his property. There was absolutely no justification on the part of the 3rd respondent to have rejected the claim made by the petitioner.

9.In the result, the impugned proceedings of the 3rd respondent dated 20.02.2020 is hereby quashed. The petitioner is directed to make a detailed representation to the 3rd respondent seeking for compensation for the property that has been taken over by the 3rd respondent and the 3rd respondent is directed to fix the compensation amount and pay the same to the petitioner within a period of 12 weeks from the date of receipt of copy of this order. It is made clear that if the compensation is not paid to the petitioner as directed by this Court, this Court will be constrained to direct the 3rd respondent to handover possession of the property to the petitioner.

10.This writ petition is accordingly allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

1. The District Collector,
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Coimbatore 641 018.
2. The Thasildar,
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Coimbatore District 641 402.
3. The Executive Officer,
Irugur Town Panchayat,
Irugur, Coimbatore 641 103.

+1cc to Mr.G.Prabhakar, Advocate, S.R.No.35490
+1cc to the Government Pleader, S.R.No.35631

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NRL (CO)
RV (09/12/2020)



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