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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No. 4819 of 2021

and

W.M.P. No. 5446 of 2021

G.Subbaiyan

... Petitioner

-Vs-

1. The District Collector,
Office of the District Collector,
Nagappattinam District.
2. The District Revenue Officer,
Office of the District Revenue Officer,
Nagappattinam.
3. The Thasildar,
Office of the Thasildhar,
Vedharaniyam Taluk,
Nagappattinam District.
4. The Block Development Officer,
Office of the Block Development Officer,
Vedharaniyam Union, Vedharaniyam Taluk,
Nagappattinam District.
5. The Revenue Inspector,
Office of the Revenue Inspector,
Vedharaniyam Taluk,
Nagappattinam District.
6. Vijaya
The President,
Office of the President,
Thethakudi North Village,
Vedharaniyam Taluk,
Nagappattinam District.
7. Illancheran
8. Dilipen



9. Somasundaram

10. Kalaikoovan

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus forbearing the third to sixth respondents to lay the road in respect of petitioner's land situated at Thethakudi North Village, Vedharaniyam Taluk, Nagappattinam District comprised in Survey No.107/13C measuring to an extent 0.45 ares and Survey No.106/13E measuring to an extent 0.7.0 ares in view of the petitioner's representation dated 28.01.2021.

For Petitioner : Mr.S.Arivazhagan

For Respondents : Mrs.Akila Rajendran
Govt. Advocate for R1 to R3 & R5

Mr.J.Ramesh
Standing counsel for R4
No appearance for R6 to R10

O R D E R

The prayer sought for herein is for a Writ of Mandamus forbearing the third to sixth respondents to lay the road in respect of petitioner's land situated at Thethakudi North Village, Vedharaniyam Taluk, Nagappattinam District comprised in Survey No.107/13C measuring to an extent of 0.45 ares and Survey No.106/13E measuring to an extent of 0.7.0 ares in view of the petitioner's representation dated 28.01.2021.

2. It is the claim of the petitioner that, there are lands belongs to his father at Amma Gounder Street, Thethakudi North Village at Nagappattinam District. These lands belongs to originally the father of the petitioner, after his demise, the petitioner as well as his sisters inherited the property. The lands at Survey No.107/13C and Survey No.106/13E are also come under the ownership of the petitioner and his sisters. In his land, in order to lay a road or to convert the already existing mud road into a blacktop road, the respondents, especially the fourth respondent had proposed to lay the road by taking a portion of the property of the petitioner at two survey numbers referred to above. Though, the petitioner had objected for such proposal, despite the opposition, the road was laid. Therefore, the petitioner in order to retrieve his land, where according to the petitioner, some standing trees were also cut down and to get compensation for such loss, had made a representation to the first respondent / District Collector on 28.01.2021. Since the



said representation has not been considered and no action seems to have been taken by the respondents, especially the first respondent, the petitioner has approached this Court by filing the present Writ Petition.

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3. Heard Mr.S.Arivazhagan, learned counsel appearing for the petitioner who would submit that, the land in question, i.e., Survey Nos.107/13C and 106/13E belongs to the petitioner and his sisters, where though objection had been raised by the petitioner, adamantly, the respondents, especially the fourth respondent and his men laid the road by taking a considerable portion of the said land belongs to the petitioner without considering the said objection from the petitioner side, thereby, they also cut down some standing trees in the land. Hence, in order to retrieve the land and to get compensation, when representation was given to the first respondent, the same since was not considered, the petitioner had no other option except to approach this Court by filing the present Writ Petition seeking the aforesaid prayer. Hence, the learned counsel appearing for the petitioner seeks indulgence of this Court in this regard to issue a direction by way of mandamus.

4. Heard Mrs.Akila Rajendran, learned Government Advocate appearing for the official respondents who would submit by relying upon the counter affidavit filed by the third respondent / Tahsildar that, the land in question originally belongs to one Govindagounder and not in the name of the Govindasamy, i.e., father of the petitioner. Therefore, it is for the petitioner to prove that, the petitioner is the owner of the property concerned. In this regard, the learned Government Advocate relies upon the following averments made in the counter affidavit:

"8. I state that the land mentioned in the Writ Petition stands registered in the name of Govindagounder and not in the name of Govindasamy, father of the petitioner. It is further submitted that admittedly Govindasamy Gounder already expired, it is for the petitioner to prove his legal right over the property. It is submitted that in as much the road is in existence for over 10 years in public usage, the improvement to the road cannot be avoided. Hence there is nothing arbitrary as alleged by the petitioner in the grounds"

5. Moreover, the road in question had been in existence for more than ten years as a public usage and since it was only a mud road, in order to convert the same as per the request of the



people as a blacktop road, fund have been sanctioned by the Government and based on that, the road was laid in the existing mud road not expanding or taking any new area and therefore, if at all the road runs in the part of the land referred in the said survey numbers and if the same belongs to the petitioner, the petitioner has to establish his right first that, he is the owner of the property concerned, then only, he can make objections and even if he make objections, whether it is a sustainable objection or not having the public interest involved in this issue, as there has been a road laid for the purpose of the public, i.e, village people, then only, a decision can be taken. Therefore, at this juncture, the petitioner cannot expect that, a prohibitory order could be issued by the Revenue Authorities as in respect of the road which has already been laid, the Revenue Authorities or Local Authorities cannot prevent the general public from using the road, as the same has been in use for more than ten years. Therefore, the learned Government Advocate seeks dismissal of this Writ Petition.

6. Taking the similar plea, Mr.J.Ramesh, learned Standing counsel appearing for the fourth respondent would contend that, only a small portion of the land belongs to the petitioner, if at all has been utilized and it has not been first time taken now at the time of making or converting the road into a blacktop road, as there has been a mud road already existing for more than ten years, on those time, the petitioner did not make any objections and all of sudden, now for the reason best known to him, he has come forward to make objections and if at all in this regard, the petitioner can come forward to negotiate with the official respondents to get the value of the land as per the market value by way of private negotiation, the respondents are ready and willing to make the said payment. Instead of resorting for such a lawful means, since the petitioner has come forward to prevent the officials from laying the road, which has already been laid and trying to prevent the ingress and egress of the general public in the road already been made, would be detrimental to the general public of that locality. Therefore, the prayer sought for by the petitioner cannot be considered by the first respondent and hence, he also seeks dismissal of this Writ Petition.

7. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

8. When this Writ Petition came up for hearing earlier on 08.11.2021, I have passed the following order:



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"It is brought to the notice of this Court that, already a report has been filed by the fourth respondent Block Development Officer. On a perusal of the same, it comes to light that, the property belongs to the petitioner and his sisters at S.Nos.106/13C and 107/13C at the village concerned also had been utilized to some extent for the purpose of laying a road or converting the present mud road to black top road, for which administrative sanction has already been made.

2. However, the petitioner since is the land owner, has raised objections for laying road and in this regard, even though it is stated in the report of the Block Development Officer that, the petitioner has not come forward for private negotiation, the course open to the official respondents under law is to acquire the land if it is required for public purpose in the manner known to law or to bring the petitioner into negotiation table to have a private negotiation and purchase the land from the petitioner for the purpose of completing the laying of road. Without resorting to these legal methods, the official respondents cannot proceed further in laying the road on the private / patta land belongs to the petitioner.

3. Therefore, in this regard Mr.Arun Natarajan, learned Government Advocate appearing for the official respondents wants two weeks time to get definite instructions from the official respondents and report before this Court.

4. Post the matter on 22.11.2021. In the meanwhile, the status quo as on today shall be maintained."

9. Pursuant to which only, now the counter affidavit has been filed by the third respondent Tahsildar on 27.11.2021, where he has taken a stand on behalf of the official respondents that, it is for the petitioner to prove that, he is the owner of the land concerned.

10. Insofar as the said contention raised by the third respondent as averred in para 8 of the counter affidavit which has been quoted herein above is concerned, since the land admittedly belongs to the father of the petitioner merely because the name of the father has been mentioned as Govindagounder instead of Govindasamy, such kind of defence cannot be taken by the Revenue Authorities, that the petitioner has to establish his right over the property in question.



11. It is not a disputed fact otherwise that the land in question belongs to the petitioner. If it is a private patta land belongs to the petitioner and even though there are co-owners available for the said land and once, a co-owner come forward to make objection as per law, the co-owner will have an equal right in the entirety of the property, unless a division or partition made in this regard. Therefore, the petitioner has got every right to make an objection of course lawfully with regard to the proposal of the official respondents to lay the road or to develop the road which is already existing.

12. Merely because the mud road is already been existing, in a village side such kind of existing mud road if not objected so far by the owner of the land where such mud road was existing, it would not automatically confer any right on the local authority or the revenue people to claim that, there was the road already available. Therefore, that cannot be claimed against the owner of the land.

13. Since admittedly the land in question, i.e., Survey Nos.107/13C and 106/13E belongs to the petitioner and co-owners, wherein a portion of the land admittedly has been taken for the purpose of laying the road or developing the road, even though it is for the public purpose, the course of action which is open for the official respondents, under law, is either to have a private negotiation with the petitioner to purchase the land otherwise to go for a acquisition under the provisions of the Land Acquisition Act.

14. In this case, admittedly, no such procedure has been adopted. Therefore, even if the road has already been laid or strengthened by taking the portion of the land belongs to the petitioner as referred to above, certainly, the petitioner would be entitled to claim compensation and in this regard, whatever the compensation as per the market value and the other solatium etc., as per the Land Acquisition Act 2014 shall be paid to the petitioner. In this regard, urgent steps shall be taken by the official respondents to negotiate with the petitioner to arrive at the compensation and solatium payable to the petitioner as per the 2014 Land Acquisition Act and accordingly, the same shall be paid with interest allowable under the provisions of the said Act. The needful as indicated above shall be undertaken by the official respondents within a period of eight weeks from the date of receipt of a copy of this order.

15. It is made clear that, within eight weeks period, if no such attempt is made and after completing the negotiation under the provisions of the 2014 Act, if the compensation with interest is not paid to the petitioner, it is open to the



petitioner to agitate the issue once again in the manner known to law. It is also made clear that, the compensation shall be for the land as well as any usufruct that is felled as claimed by the petitioner.

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16. With these observations and directions, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

vji

To

1. The District Collector,
Office of the District Collector,
Nagappattinam District.
2. The District Revenue Officer,
Office of the District Revenue Officer,
Nagappattinam.
3. The Thasildar,
Office of the Thasildhar,
Vedharaniyam Taluk,
Nagappattinam District.
4. The Block Development Officer,
Office of the Block Development Officer,
Vedharaniyam Union, Vedharaniyam Taluk,
Nagappattinam District.
5. The Revenue Inspector,
Office of the Revenue Inspector,
Vedharaniyam Taluk,
Nagappattinam District.

+1cc to Mr.S.Arivazhagan , Advocate, S.R.No.62256

+1cc to Mr.*, Advocate, S.R.No.62431

W.P. No. 4819 of 2021

and

W.M.P. No. 5446 of 2021

SSI[co]

NSK 15/02/2022