



W.P. No. 12618 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

and

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

W.P. No. 12618 of 2021

1. R.Kamalam
2. R.Kannan
3. R.Rajendran
4. R.Selvam

.... Petitioners

Vs.

1. The District Collector
Collectorate
Tiruvarur District – 610 004.
2. The Divisional Engineer
Highways Department
By-pass Road
Opposite to Taluk Office
Tiruvarur.
3. The Assistant Divisional Engineer
Highways Department
By-pass Road
Opposite to Taluk Office
Tiruvarur.



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4. The Commissioner
Municipal Office
Tiruvvarur.
[R4 suo motu impleaded
vide order dated
15.06.2021 made in
W.P. No. 12618 of 2021]

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the Respondents to remove the encroachment from the government road namely Vairavel Road, comprised in T.S.No. 540/1A, 541/1A and 541/1C of Ward -3, Block 14 of Tiruvvarur Town by considering the Petitioner's representation dated 24.10.2018.

For Petitioner : Mr. P.Paramasiva Doss

For Respondents : Mrs. R.Anitha (For R1 to R3)
State Government Counsel
Mr. P.Balathandayutham (For R4)
State Government Counsel

ORDER

(Order of the Court was passed by **N.KIRUBAKARAN, J**)

The Petitioners have come before this Court seeking Writ of Mandamus, directing the Respondents to remove the encroachment on the Government road, viz., Vairavel Road, comprised in T.S. No. 540/1A, 541/1A and 541/1C of Ward No.3, Block No. 14 of Thiruvvarur Town by considering the Petitioners' representation dated 24.10.2018.



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2. According to the Petitioners, their father P.Ramasamy purchased the land measuring to an extent of 69,260 square feet comprised in Survey Nos. 540 and 541 from one Mr.Venakatarama Iyer on 30.05.1972 by way of a Sale Deed registered as Document No.1122 of 1972. Out of the said property, an extent of 10035 square feet comprised in T.S. No. 540 /1A, 541/1A, 541/1C of Ward No.3, Block No.14 of Tiruvarur Town has been acquired by the Highways Department for formation of a by-pass road vide proceeding in R.C. No. 18376/76-A3 in the year 1983 from the father of the Petitioners, which is situated at North and Western side of boundaries to the remaining land of the Petitioners.

3. The case of the Petitioners is that anti-social elements successfully encroached upon the margin of the said Vairavel Road, which measures 40 feet width by putting up hut and constructing pucca building and thereby causing nuisance and disturbances to the Petitioners and other general public. The said encroachment shrinked the width of the said road and made it as a lane. Therefore, the Petitioner's father gave representation to the Second Respondent on 30.03.2004 to remove the said encroachment.



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However, no action has been taken. The Petitioners, who owns the properties are affected by the encroachers, who had encroached upon the margin of the road, which in fact affects the access to the Petitioners into their properties. Subsequently, the Petitioners also made a representation dated 24.10.2018 seeking removal of the said encroachment. Based on the representation of the Petitioners, the Second Respondent sent a communication on 26.12.2018 to the Commissioner, Municipal Office, Thiruvarur Municipality, Tiruvarur requesting him to prepare and forward a sketch in respect of Town Survey Nos. 540 /1A, 541/1A, 541/1C to determine the encroached land. Though the time has lapsed, no action has been taken, which compelled the Petitioner to come before this Court seeking Writ of Mandamus.

4. In view of the aforesaid position, this Court, *suo motu*, impleads the Commissioner, Thiruvarur Municipality, Thiruvarur District as Fourth Respondent in the Writ Petition and Mr. P.Balathandayutham, Learned State Government Counsel takes notice for the newly impleaded Respondent.



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5. Heard Mr. P.Paramasiva Doss, Learned Counsel for the Petitioner and Mrs. R.Anitha, Learned State Government Counsel appearing for the First to Third Respondents and Mr. P.Balathandayutham, Learned State Government Counsel appearing for the Fourth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

6. A perusal of the records would show that a portion of the properties belonging to the Petitioners has been acquired for the purpose of formation of by-pass road, as evident from the notice dated 24.10.1983 by the land acquisition officer.

7. The extract from town survey land register in respect of Town Survey Nos.541/1A and 541/1C discloses that the properties are named as Vairavel Road and Town Survey No. 541/1B discloses that the property stands in the name of the Petitioners' father. Therefore, it is evident that from the Petitioners' father only the properties have been acquired and the by-pass road has been laid. Hence, it seems that the encroachers made encroachment on the margin of the by-pass road shrinking the width of the said road. The photographs produced before this Court also proves the



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same. The representation dated 24.10.2018 given by the Petitioner resulted in issuance of the communication dated 26.12.2018 by the Junior Engineer (Highways), Construction and Maintenance, Thiruvarur to the Commissioner, Municipal Office, Thiruvarur requesting the said authority to survey and mark the lands comprised in the aforesaid survey numbers belonging to the Highways Department along with a sketch to show the encroachment made by the encroachers. Though the said communications were given on 26.12.2018 nothing has been done to remove the said encroachment.

8. Therefore, this Court directs the Respondents to make a joint inspection to measure the properties comprised in Survey Nos. 540/1A, 541/1A, 541/1C and find out the encroachment made and vacate the encroachers, after giving due notice to them, following due process of law. It is made clear that the Respondents shall issue notice to the encroachers and action should be taken against them following due process of law. If any action is being taken against the encroachers without issuing notice, it would be amount to contempt of Court. The aforesaid exercise shall be done within a period of 16 weeks from the date of receipt of a copy of this order.



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9. With the above direction, this Writ Petition is disposed of. No costs.

10. Call the matter for reporting compliance on 20.10.2021.

[N.K.K., J.] [T.V.T.S., J.]

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Maya

Index : Yes

Internet : Yes

Speaking order

To

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and
T.V.THAMILSELVI, J**

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