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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-10-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.44048 of 2016

And

WMP No.37856 of 2016

G.Subhaiyan

...Petitioner

vs.

1. The District Collector,
Udhagamandalam,
The Nilgiris District.
2. The District Revenue Officer,
Udhagamandalam,
The Nilgiris District.
3. The Revenue Divisional Officer,
Coonoor,
The Nilgiris District.
4. The Tahsildar,
Coonoor Taluk,
Coonoor,
The Nilgiris District.
5. The Nilgiri Tea Estates Ltd.,
Represented by its Manager,
Mailoor Estate,
Kullakamby Post,
Coonoor Taluk,
The Nilgiris - 643 218.

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to remove the obstruction (Gate) made by the fifth respondent in S.No.608/1, obstructing the public cart track at Melur Village, Coonoor Taluk, The Nilgiris.



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For Petitioner : Mr.K.Mayurapriyan

For Respondents
1 to 4 : Mr.K.M.D.Muhilan,
Government Advocate.

For Respondent-5 : Mr.C.A.Diwakar

O R D E R

The relief sought for in the present writ petition is to direct the respondents to remove the obstruction (Gate) made by the fifth respondent in S.No.608/1, obstructing the public cart track at Melur Village, Coonoor Taluk, The Nilgiris District.

2. The petitioner states that he owns a Tea Estate at Kottakkal, Melur Village, Coonoor Taluk, The Nilgiris comprised in Survey No.665/3, measuring about 4 acres and 75 cents. There is a cart track running from Sengutarayan Malai lease village to Manjacombai-Kullakamby Main Road, which runs through various Survey Numbers and passes through various individual's lands and the cart track also passes the Estate of the fifth respondent in Survey No.608/1 and reaches the Manjacombai-Kullakamby Main Road. This is the only way to reach the land belongs to the petitioner by vehicle and further, this is the only way to reach Sengutarayan Malai lease village by small vehicle. From the time immemorial, the small tea growers from the area and the Tribal villages using this road without any interference from any one. Similarly two other roads are passing through the fifth respondent-Estate in Survey Nos.608/2 and 608/3, which leads to Naduthottam and Kulhukkal respectively.

3. The petitioner further states that the road is in existence from the past many decades and used by the Tribal villagers and the small tea growers in that locality. While-so, the fifth respondent had erected gates in each road and the said erection was questioned by the public.

4. The fifth respondent had stated that it is only for safety purpose, they have erected the gate. However, the fifth respondent assured that they will not lock the gate and it is open for the public use without any interference.

5. In spite of the oral promise, the fifth respondent started giving trouble to the small tea growers of that locality and prevented the petitioner from using the vehicle to load the tea leaves and other tea growers, which



resulted in heavy loss and the vehicles were prevented from moving from one side to the other side through the road. The fifth respondent used to lock the gates in Survey Nos.608/1, 608/2 and 608/3.

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6. After several round of agitation, the fourth respondent-Tahisldar has sealed the gate at Survey No.608/2 and aggrieved by the said action of the fourth respondent-Tahsildar, the fifth respondent filed WP No.24445 of 2015 and this Court passed an order on 27.08.2015, directing the second respondent to remove the lock and further made it clear that the general public is also entitled to use the road, pending disposal of that writ petition. Pursuant to the order from this Court, the fourth respondent removed the lock and the gate in Survey No.608/2, which is in the usage of the public at large.

7. In this backdrop, it is contended that the Tribal people residing are primitive Tribals and they are residing from time immemorial. All along, they are using the said cart track for movement of vehicles and for emergency purposes.

8. In view of the fact that the fifth respondent erected the gate, the free access to the village is entirely stopped. It is contended that the other small tea growers of that locality is also effectively prevented by the fifth respondent for movement of vehicle and they could not able to load the tea leaves for selling the same in the markets.

9. It is not in dispute between the parties to the lis on hand that the objected erection of gate by the fifth respondent is the only road available for all these people and there is no other way for public usage.

10. In view of the fact that the said road, being the only road, is in continuous usage of the Tribals and the small tea growers of that locality for several decades, the people of that locality raised an objection for erection of gates.

11. Though the fifth respondent-Tea Estate made oral promises, they have not honoured the same. Thus, there was an agitation amongst the Tribals and the small tea growers and law and order problems were created. When the similar kind of erection of gate is made by the Tahsildar in the other Survey No.608/2, the fifth respondent filed writ petition and got an order from this Court and the said barricade was removed. If that is the action taken by the fifth respondent, the fifth respondent is expected equally to remove the barricade



put up by them in Survey No.608/3.

12. When the fifth respondent-Tea Estate have taken an action to remove the gates erected by the Tahsildar in the other Survey Number in respect of the other route, the similar approach must be adopted by the fifth respondent in removing the erected gates and thereby making the cart track for the usage of all Tribals and the small tea growers of that locality. The fifth respondent cannot approbate and reprobate in such issues, where the public usage is recognised for many years.

13. The usage of the subject cart track is not disputed between the parties. Even the fifth respondent-Tea Estate is admitting that the road is in usage by the Tribals and they are not preventing them from using the road, but they have intended to regulate the same. However, this Court is of an opinion that any such private regulation of the public usage will cause hindrance and make law and order issues.

14. Once the public road is established that there is a customary usage by the primitive Tribals of that locality, then such usage must be permitted freely and without any interruption. No doubt, the land may belongs to the fifth respondent, the fifth respondent purchased the land and even before that the cart track was in the usage of the primitive Tribals of that locality.

15. When the usage of the cart track is not disputed between the parties and the primitive Tribal people are residing in that village and when there is no other way for these people and the small tea growers, then this Court has to consider whether any such prevention by any person can be sustained in the interest of the public.

16. The photograph of the barricade erected by the fifth respondent-Tea Estate is placed before this Court. It is a vast Tea Estate, wherein there is a customary usage of cart track through the Estate. The photograph shows that the fifth respondent erected a barricade and without their permission, no vehicle can pass on through the road and such a prevention certainly would cause infringement of customary right and more-so, the Easementary right of the primitive Tribals and small tea growers, who all are using the cart track for many decades. The right of usage of these poor people can never be denied and in such an event, they are deprived of their right of medical needs and other utility services.

17. In view of the fact that the primitive Tribals are residing there, they need electricity,



water, medical assistance and other basic amenities. The Government is duty bound to provide all such basic amenities to the Tribal people residing in that locality for several decades. In the event of erection of gates or barricades, there is no possibility of re-access to reach the village. In view of the fact that the houses of the Tribals were in dilapidated condition, the Government formed a Scheme and constructed the houses to these people. Now they are residing in the said constructed houses handed over to them by the Government.

18. This being the factum, they need development in that village and for such development, the usage of road must be essential and such a right cannot be taken away.

19. Admittedly, the primitive Tribal people are residing in the said village. Any such prevention of usage of the cart track by the Tribals will attract the provision of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Section 2 sub-section (1) sub-clause (a) defines 'atrocities' means an offence punishable under Section 3. Section 3 enumerates 'punishments for offences of atrocities'. Section 3 sub-section (1) sub-clauses (f), (g) and (y), which read as under:-

"(f) wrongfully occupies or cultivates any land, owned by, or in the possession of or allotted to, or notified by any Competent Authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe, or gets such land transferred."

(g) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.

Explanation.--For the purposes of clause (f) and this clause, the expression 'wrongfully' includes --

(A) against the person's will;

(B) without the person's consent;

(C) with the person's consent, where such consent has been obtained



employment etc., Thus, any sort of prevention or restriction or regulation by the 5th respondent would affect the rights of the Tribe villagers and the other people using that cart track.

24. The learned counsel for the 5th respondent contended that the 5th respondent is not totally preventing the villagers. However, they are regulating the entry and exit through the gates. This Court is of the considered opinion that any such regulation or restriction, affecting the rights of the Tribe villagers can never be accepted. These restrictions or regulations by the 5th respondent will create law and order issues and will provide scope for the 5th respondent to regulate at their own choice, which cannot be permitted in the interest of public.

25. Based on the facts and circumstances established, this Court is inclined to pass the following orders:

(1) The respondents 1 to 4 are directed to remove all obstructions, gates and erection of any structure in the subject cart track, within a period of one week from the date of receipt of a copy of this order and provide free access and usage for all the Tribe people of the village and small tea growers and to the public without any restriction.

(2) In the event of any such restriction by the 5th respondent or by any other person, then all appropriate actions are to be initiated by the competent authorities.

26. With the above directions, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

/True Copy//

Sub Assistant Registrar

Svn

To

1. The District Collector,
Udhagamandalam,
The Nilgiris District.
2. The District Revenue Officer,
Udhagamandalam,
The Nilgiris District.



3. The Revenue Divisional Officer,
Coonoor,
The Nilgiris District.

4. The Tahsildar,
Coonoor Taluk,
Coonoor,
The Nilgiris District.

+1cc to Mr.Sivakumar, Advocate, S.R.No.52163
+1cc to Mr.C.A.Diwakar, Advocate, S.R.No.52597
+1cc to the Government Pleader, S.R.No.52817

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