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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2022

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THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.32673 of 2012

and

MP.Nos.1 & 2 of 2012

1.K.Janaki
rep. by Power of Attorney Mr.V.Nandagopal

2.V.Nandagopal

...Petitioners

Vs.

1.The District Collector,
District Collector Office,
Coimbatore District.

2.The District Collector,
District Collector Office,
Tiruppur District.

3.The Tahsildar,
Palladam Taluk,
Palladam, Tiruppur District.

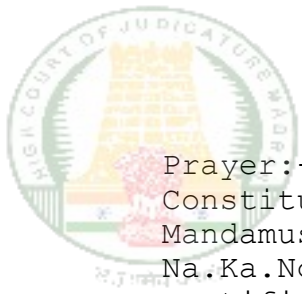
4.The Revenue Inspector,
Samalapuram Sub-Taluk,
Palladam Taluk, Tiruppur District.

5.The Executive Engineer,
C.E.D.C/South,
Tamil Nadu Electricity Board,
Vadukapalayam, Palladam,
Tiruppur District.

6.The Superintending Engineer,
Tamil Nadu Electricity Board,
Tiruppur District 641 602

7.The Chief Engineer,
Tamil Nadu Electricity Board,
Coimbatore Zone,
Tatabad Road, Coimbatore 641012

...Respondents



Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Na.Ka.No.24906/07/A-5 dated 03.01.2007 and subsequent possession certificate issued by the 4th respondent dated 09.08.2008 and to quash the same by directing the respondents herein not disturb the public pathway in S.No.83 of 63, Velampalayam Village, Palladam, Tiruppur District.

For Petitioners: Mr.S.Sathiaseelan

For Respondents: Mr.T.Sampath Kumar
Government Advocate for R1 to R4
Mr.Abul Kalam
Standing Counsel for R5 to R7

ORDER

This writ petition has been filed for issuance of writ of Certiorarified Mandamus to quash the order of the first respondent dated 03.01.2007 issued in Na.Ka.No.24906/07/A-5 and the possession certificate issued by the fourth respondent dated 09.08.2008 and for a direction to the respondents not to disturb the public pathway in S.No.83 of 63, Velampalayam Village, Palladam, Tiruppur District.

2. The case of the petitioners is that the second petitioner is the husband of the 1st petitioner and he is also her power agent. The 1st petitioner is the owner of the agricultural lands in S.No.79 measuring to an extent of 5.20 acres and in S.No.86 to an extent of 1.38 acres, totally 6.57 acres, vide sale deed dated 13.06.1994.

3. The petitioners would claim that the 1st petitioner and her predecessors have been cultivating the land for more than 50 years. In between these two lands namely S.No.79 and S.No.86/B, there is a Government Poramboke land in S.No.83 to an extent of 1.85 hectares. The said land has been classified as public pathway in Revenue records and the same has been used by the villages from time immemorial. According to the petitioners, a 40 feet wide pathway runs east to west on the northern side of S.No.83, which is the only access to their lands and no alternative Road is available.

4. The petitioners would state that in the month of June 2012, the fifth respondent visited the land in S.No.83 and on enquiry, the 1st petitioner was informed that the above said land was transferred by the first respondent to the Electricity Board for construction of sub-station and possession certificate was also issued by the Fourth Respondent and a sub-station will



be installed on the public pathway.

5. The learned counsel appearing for the petitioners Mr.S.Sathiaseelan would argue that admittedly the land in S.No.83 has been classified as a public pathway in the Revenue records and on the northern side of the property, a 40 feet Road runs in between the lands of the 1st petitioner and the same has been used time immemorial as access to the petitioners' property. The learned counsel drew the attention of this Court to Sections 2(28), 125 and 131 of the Tamil Nadu Panchayats Act, 1994, in support of his submission that once a pathway is being used by the public, which will be classified as public pathway, such classification can be changed only by the Government by issuing notification, however in this case no notification was issued. Placing reliance on the decisions of the Apex Court reported in AIR 1965 SC 1147 and the judgment of the High Court reported in 1992-2-LW 124 and AIR 1993 MAD 258 he further added that once the land is classified as public road, no one has any right to prevent any public from using the public Road including the local body. He further contended that even though in the counter filed by the third respondent, it has been stated that a publication calling for objections was effected before transfer of the land, but it is incorrect and false.

6. According to the learned counsel, the impugned orders have been passed without following the mandatory provisions of the Act and hearing the view of the public, hence they are liable to be set aside. However, the learned counsel restricts his prayer insofar as the public Road alone. It is his submission that the petitioners are not against establishment of the sub- station, but they want to protect their right to use the public Road.

7. Per contra, Mr.T.Sampath Kumar, learned Government Advocate appearing for the respondents 1 to 4 by referring the counter filed by the third respondent contended that the petitioners have access to the lands in dispute from Palladam-Mangalam main Road, which runs near to the land of the petitioners. He further added that transfer of the land was effected by following the procedures and there is no infirmity.

8. Mr.Abul Kalam, learned standing counsel appearing for the respondents 5 to 7 would submit that representations were received about low voltage of electricity supply, hence, the Electricity Board decided to install substation to improve the electricity supply in that area, at the cost of Rs.550 lakhs including the cost of the land. It is further contended that construction of substation in S.No.83 would not in any way affect the interest of the petitioners.



9. Heard the rival submissions of the learned counsels and perused the materials available on record.

10. In the matter on hand, there is no dispute that the 1st petitioner is the absolute owner of the properties to an extent of 6.57 acres in S.No.76 and S.No.86/B of 63, Velampalayam Village, Palladam, Tiruppur District. Indisputably the land in S.No.83 having an extent of 1.85 hectares has been classified as Poramboke land and in the Revenue record, it has been mentioned as public pathway. It is the specific case of the petitioners that the public pathway is being used by the public from time immemorial, which is the only access to their lands.

11. Sub-section 28 of Section 2 of Tamil Nadu Panchayats Act, 1994 defines public road. Section 125 states that the public road will vest with local panchayat. Sub-Section (2) of Section 125 authorises the Government to issue notification for exclusive operation of this act, such as public road, drain, drainage work, tunnel or culvert and may also modify or cancel such notification. Section 131 forbids any obstructions in or over public roads etc.

12. For ready reference, the relevant provisions are extracted hereunder:-

"Section 2: Definitions-

.....

(28) "public road" means any street, road, square, Court, alley, passage, cart-track, foot-path or riding-path, over which the public have a right of way, whether a thoroughfare or not, and includes-

(a) the roadway over any public bridge or causeway;

(b) the footway attached to any such road, public bridge or causeway; and

(c) the drains attached to any such road, public bridge or causeway, and the land, whether covered or not by any pavement, veranda, or other structure, which lies on either side of the roadway up to the boundaries of the adjacent property, whether that property is private property or property belonging to the State or Central Government;

125. Vesting of public roads in Village Panchayat-

(1) All public roads in any village (other than roads which are classified by the Government as National Highways or State Highways or as major District roads or as Panchayat Union roads) shall vest in the Village Panchayat together with all pavements, stones, and other materials thereof, all



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works, tunnels and culverts, whether made at the cost of the Village Panchayat or otherwise, in, alongside or under such roads, and all works, materials and things appertaining thereto.

(2) The Government may, by notification, exclude from the operation of this Act any such public road, drain, drainage work, tunnel or culvert and may also modify or cancel such notification.

131. Prohibition against obstructions in or over public roads, etc.- (1) No person shall, except as permitted by rules made under this Act and except in accordance with the conditions imposed by any licence made requisite by such rules-

13. In Municipal Board, Manglaur Vs. Mahadeoji Maharaj reported in AIR 1965 SC 1147, the Hon'ble Apex Court has held as follows:-

8. The law on the subject may be briefly stated thus: Inference of dedication of a highway to the public may be drawn from a long user of the highway by the public. The width of the highway so dedicated depends upon the extent of the user. The side-lands are ordinarily included in the, road, for they are necessary for the proper maintenance of the road. In the case of a pathway used for a long time by the public, its topographical and permanent landmarks and the manner and mode of its maintenance usually indicate the extent of the user.

10. If that is the legal position, two results flow from it, namely, (1) the Municipality cannot put up any structures on the public pathway which are not necessary for the maintenance or user of it as a pathway, (2) it cannot be said that the putting up of the structures for installing the statue of Mahatma Gandhi or for piyo or library are necessary for the maintenance or the user of the road as a public highway. The said acts are unauthorised acts of the Municipality. The plaintiff, who is the owner of the soil, would certainly be entitled to ask for an injunction restraining the Municipality from acting in excess of its rights. But the plaintiff cannot ask for possession of any part of the public pathway, as it continues to vest in the Municipality.

11. In the result, we hold that the plaintiff would be entitled to a decree for permanent injunction restraining the Municipality from putting up the said structures on a part of the said public pathway, and the suit insofar as it asked for a decree for possession would be liable to be



dismissed. We allow the appeal in part. As both the parties have succeeded and failed in part, they will bear their respective costs throughout."

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13.1. In the case of Veeriah Asari alias Veerachari Vs. The Salem Municipality (1992-2-LW 124), it has been observed as follows:-

"14. Under sub-S.(4) and (6) of S.183, it is open to the Municipality to have the projection or construction removed even without notice. Under sub-S(4) even licence cannot be granted if the projection, construction or occupation is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road as such. Learned counsel for the plaintiff contends that there is no evidence whatever in this case that this construction has caused any public inconvenience or is likely to be injurious to health. Once it is admitted that the land is intended to be used only as a street and has been classified as street poramboke, then no part of it can be leased out or be permitted by the Municipality to be used by any person for any other purpose. Such user will undoubtedly interfere materially with the use of the property as a road. Hence any licence granted in favour of the plaintiff by the Municipality from 1959 onwards was ab initio void and the plaintiff cannot claim any right thereunder."

13.2. In S.Shanmugha Sundaram Vs. The Collector of Kamarajar District and others reported in AIR 1993 MAD 258, this Court has held and observed as follows:-

"8. Learned Government Advocate, appearing for the respondents 1 and 2 contends that the provisions under the District Municipality Act, 1920 will not be relevant to the village in this case, since it is governed by Tamil Nadu Panchayat Act and that, the Tamil Nadu Panchayats Act alone has to be looked into. 10. When considering the question regarding the right of Zamindar to trees of spontaneous growth, Varadachariar, J. in Rajah Saheb Maharban-I-Costan Sri Raja Raw Venkata Kumara Mahipathi Surya Rao Bahadur Guru, Sardar Rajahmundry Sarcar and Maharaja of Pithapuram V. The Chairman, Municipal Council, Cocanada (1936) 71 Mad LJ 749 : (AIR 1936 Mad 919), it has been held that the Zamindar as owner of the adjoining land will also be the owner of the soil of the puntha and of trees spontaneously growing upon it subject to the right of the public to use it as highway. In Modhu Sudan Kundu V. Promoda Nathw Roy (1893) ILR 20 Cal 732



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it has been held by a Division Bench of Calcutta High Court that when considering Section 10 of Bengal Act III of 1864 does not deprive a person of any right of private property that he may have in land used as a public Road, nor does it vest the sub soil of such land in a municipality. A Division Bench of this Court in S.Sundaram Ayyar V. The Municipal Council of Madura and the Secretary of State for India in Council, (1902) ILR 25 Mad 635 : 12 Mad LJ 37 has held that while considering the provisions of Section 3(27) of the Madras Municipalities Act, Act IV of 1884, when a street is vested in a Municipal Council, such vesting does not transfer to the Municipal Authority the rights of the owner in the site of soil over which the street exists."

14. In the decisions referred above, the Hon'ble Apex Court and this Court have consistently held that the public road cannot be used for any other purposes and there shall not be any obstructions from using the public Road.

15. In this case, even though the third respondent has stated in the counter that the petitioners are having alternative Road to reach their property and a paper publication was effected inviting objections from public, before transfer of the land in question, but no material has been placed to substantiate the same. On the other hand, the information furnished under the Right To Information Act by the third respondent shows that no alternative public Road is available to reach the properties of the petitioners.

16. It is apposite to point out that in the representations sent by the 1st petitioner dated 8.6.2012, 21.8.2012, 31.8.2012 and 21.09.2012, it has been clearly stated that the official respondents had given undertaking before the panchayat President to the effect that they will not disturb the 40 feet Road formed on the northern side of S.F.No.83, but in violation of the same, they laid boundary stones and put up small shed. It is also categorically stated that this public Road is the only access to the property of the 1st petitioner. Despite receipt of the representations, none of the respondents responded to the same.

17. It is an admitted fact that before the impugned orders came to be passed by the first respondent, no notification was issued by the Government to meet out the mandatory requirement under Section 125(2) of Tamil Nadu Panchayats Act 1994. In the light of the facts of this case and the principles laid down in the decisions referred above, this Court is of the considered opinion that the orders impugned in this writ petition cannot be allowed to stand and they are liable to be quashed.



18. At this juncture, the learned counsel for the petitioners would state that at the time of admission, an order of status quo was granted, hence, the Electricity Board had constructed a sub-station in the land in S.No.83 leaving 40 feet road, therefore the petitioners are using the Road as on date and the petitioners have no objection or grievance for construction of the sub-station in the remaining land in S.No.83 of 63, Velampalayam village.

19. Taking note of the submissions of the learned counsel representing the petitioners, the orders impugned in the writ petition are set aside insofar as the 40 feet Road, which runs east to west on the northern side of S.No.83 of 63, Velampalayam Village in Palladam Taluk, Tiruppur District and consequently the respondents are hereby directed not to obstruct or prevent the petitioners from using the public Road.

20. With the above directions and observations, this writ petition is allowed. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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To

- 1.The District Collector,
District Collector Office,
Coimbatore District.
- 2.The District Collector,
District Collector Office,
Tiruppur District.
- 3.The Tahsildar,
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- 4.The Revenue Inspector,
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Tamil Nadu Electricity Board,
Tiruppur District 641 602

7.The Chief Engineer,
Tamil Nadu Electricity Board,
Coimbatore Zone,
Tatabad Road, Coimbatore 641012

+1cc to Mr.S.Sathiaseelan, Advocate, S.R.No.29845
+1cc to the Government Pleader, S.R.No.30710

W.P.No.32673 of 2012 and
MP.Nos.1 & 2 of 2012

AJS (CO)
CT 12/05/2022