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W.P.Nos.8932 & 8934 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.Nos.8932 & 8934 of 2020
and W.M.P.Nos. 10864, 10867,17876,
18036, 18041 & 19035 of 2020

M/s.S & S Foundations Pvt. Ltd.,
Rep. by its Chairman Mr.K.Sundararaj
No.45, Giriappa Road,
T.Nagar, Chennai – 17.

... Petitioner
in W.P.No.8932 of 2020

S.Sathyanarayanan

Petitioner
in W.P.No.8934 of 2020

Vs.

- 1.The Principal Secretary,
High Ways and Minor Ports (HF-1) Department,
Fort St. George, Chennai – 600 009.
- 2.The District Collector, Tiruvallur District.
- 3.The Tahsildar,
Uthukottai Taluk, Tiruvallur District.
- 4.The Chief Engineer (NABARD & Rural Roads)
High Ways Department, Chennai – 25.
- 5.The Assistant Engineer,
High Ways Department,
Alagar Nagar, Chengalpattu,
Chengalpattu District.



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6.The Block Development Officer,
Ellapuram Panchayat Union,
Ellapuram, Uthukottai Taluk,
Tiruvallur District.

7.The Panchayat President,
Azhinjivakkam Village, Uthukottai Taluk,
Tiruvallur District.

...Respondents

[R7 impleaded vide order dated 30.06.2022 made in WMP.Nos.19032 & 17877 of 2020]

Prayer in W.P.No.8932 of 2020: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to forbearing the respondents their men agents servants or any other persons claiming through them from in any way disturbing the peaceful possession and enjoyment of the property of the Petitioner in respect of his agriculture land Properties comprised in S. No 84/1 and 84/2A situated in alunjivakkam village Uthukottai Taluk Tiruvallur district without following due process of Law.

Prayer in W.P.No.8934 of 2020: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to forbearing the respondents their men agents servants or any other persons claiming through them from in any way disturbing the peaceful possession and enjoyment of the Property of the Petitioner in respect of his agriculture land properties comprised in S. No 113/5a, 113/5b, 100/1 and 99/1a Siutated in Alunjivakkam village Uthukottai Taluk tiurvallur District without following due process of law.

For Petitioner : Mr.R.V.Lakshmipathy for
in both W.Ps Mr.P.G.Padmanabhan

For Respondents : Mr.R.Kumaravel
in both W.Ps Additional Government Pleader
for R1 to R6

Mr.T.H.A.Sirish Chowdhry for
T.M.Naidu and Company for R7



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ORDER

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The issue involved in both these writ petitions are common and hence, they are taken up together, heard and disposed of through this common order.

2.The petitioners apprehend that the respondents are attempting to enter into their private patta lands and put up a road and hence, have sought for the issuance of a writ of mandamus forbearing the respondents from in any way disturbing the peaceful possession and enjoyment of the subject properties, without the respondents following the due process of law.

3.The case of the petitioners is that they are the owners of the subject properties by virtue of registered Sale Deeds dated 08.07.2009 and 01.06.2016. The further case of the petitioners is that they have also been issued patta for the subject properties in Patta Nos.218, 220 and 226.

4.The petitioners have specifically stated in the affidavit filed in support of the writ petitions that the officials belonging to respondents 4



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and 5 trespassed into the property and brought heavy equipments and started felling down the standing trees. When the same was questioned, the petitioners were informed that the Panchayat road is going to be upgraded and widened by the Highways Department.

5.The grievance of the petitioners is that the respondents cannot enter into the properties of the petitioners and lay a road even without acquiring the property under the Land Acquisition Act and since there was a potential threat to the possession of the petitioners, these writ petitions were filed seeking for appropriate reliefs.

6.Respondents 1, 4 and 5 have filed counter affidavit. The stand taken by those respondents are extracted hereunder:

3.I respectfully submit that the averments contained in the affidavit are false, incorrect and not maintainable however it is to state that the work of upgradation of V.K. Road to Athingavanur via Azhinjivakkam km 0/0 to 4/4 was taken up in the scheme of Upgradation of Panchayat Union Roads / Panchayat Roads to Other District Road Standards 2019-20 sanctioned in G.O. (2D) No. 45 Highways and Minor Ports (HF1) Dept. dated 15.10.19. The work has been



tendered and taken up for execution. The above road is under the control of Rural Development Department and subsequently handed over to Highways Department for upgradation as per the above G.O. The width of the existing road is 3.75 m and the scope of the work is to strengthen the 3.75 m wide road. There is no scope for widening of the road in this project and there is no scope for Land Acquisition in this Project. When the work was started the petitioner stopped the work claiming that a portion of the road belongs to the petitioner and that he has patta for the portion of the road. It is submitted that the Rural Development Department has been maintaining the road by doing repair and renewal works and through traffic is plying on the road connecting villages namely Vengal, Kannigaiperur, Athingavanur, Azhinjivakkam, Gurvoyal, Bashigapuram, RedHills, Ponniammanmedu etc. for which the petitioner has not raised any objection. But now when Highways Department started the work the petitioner stopped the work even after explaining that there is no widening of road and strengthening in the existing 3.75 m width of the road only will be taken up. It is submitted that the petitioner's statement that the Highways Department had entered into his agriculture lands and started felling of trees is false.

4. I respectfully submit that the Highways Department has no plans to widen the road and the existing 3.75m width of the road is to be strengthened and maintained. As there is



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no plan for widening of road there is no need for additional land to be acquired and hence need for land acquisition legal process does not arise. The petitioner's statement that Highways Department is acquiring agriculture lands and due process of law is not followed are false. It is further submitted that the petitioner's statement that Highways department is taking possession of agriculture land in high handed manner and that the Highways Department has not acted in accordance with law are false.

5. I respectfully submit that the road taken up for strengthening does not pass through land bearing survey nos. 113/5A, 113/5B, 100/1 and 99/1A of Azhinjivakkam Village (Uthukkottai Taluk, Thiruvallur District). Whereas the exact survey nos. of the above road are 7/1, 7/2, 7/3, 7/4 7/5, 7/6, 99/2, 99/2A, 99/2B, 84/3, 67, 69 and 70 and the petitioner's name is not found in the revenue records of these survey nos. The petitioner's statement that Highways Department is entering in to his agricultural land and started felling trees and caused huge damage and not following due process of law for land acquisition are false and incorrect.

6. I respectfully submit that Highways Department will only lay the road to the existing width of 3.75 m as per sanctioned estimate and will not do any widening of the road on the adjacent agriculture lands. The petitioner's statement that the Highways Department is attempting to acquire the



property of the petitioner with the help of police without following due process of law is false and incorrect.

7.The impleaded 7th respondent viz., the Panchayat has also filed an affidavit and the relevant portions in the affidavit are extracted hereunder:

10. I submit that as aforesaid, the Highways Department has not entered into the agriculture land of the writ petitioner. Since there is no widening of the road, there is no necessity for additional land to be acquired and therefore there is no question of land acquisition legal process and thus no notices were given and the work of strengthening of road has been commence after due tender process. The work has been commenced not in high handed manner by the Highways Department and the work is started in accordance with law. The Highways Department commenced the work of strengthening of the road for the public purpose so as to reduce the frequent accidents. The work of strengthening the road is according to Law and there is no violation. Hence, the prayer of the writ petitioner in the above writ petition deserves no merits.

11. I submit that the Highways Department taken up the road strengthening work does not pass through the land



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of the first respondent/writ petitioner comprised in Survey Nos.113/5A, 113/5B, 100/1 and 99/1A of Azhinjivakkam Village, Uthukkottai Taluk, Thiruvallur District. The writ petitioner's land being adjacent to the existing road wherein the work of strengthening of the road is to be carried by the Highways Department in in Survey Nos.7/1, 99/2, 99/1B, 84/3, 67, 69 and 70, the Writ Petitioner / 1st Respondent has encroached upon the said Survey Nos and only to prevent the authorities from laying the road as per the map/sketch of the road covering the said survey numbers of herewith filed along with this petition. It would deem fit that the Thashildhar / 3rd Respondent may be directed to survey and file report to demonstrate the malafides of the 1st Respondent, which would result in removing 1st Respondents' encroachments. It may be noted that the writ petitioner's name is not found in the revenue records of the above survey numbers. Hence the filing of the writ petition is liable to be dismissed.

8.Heard Mr.R.V.Lakshmipathy, learned counsel appearing on behalf of the petitioners, Mr.R.Kumaravel, learned Additional Government Pleader appearing on behalf of the respondents 1 to 6 and Mr.T.H.A.Sirish Chowdhry, learned counsel appearing on behalf of the 7th respondent.

9.It is clear from the stand taken by the respondents that there is no proposal for any widening of the road and the work was undertaken



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only for strengthening the existing road. It is also clearly stated that the respondents are not going to enter the patta lands of the petitioners and if in case the widening of the road is proposed, the lands will be acquired in accordance with the Land Acquisition Act.

10.The wife of the Chairman of the Company who is the petitioner in W.P.No.8932 of 2020 filed a writ petition before this Court in W.P.No.10619 of 2020 and the said writ petition was heard by the Division Bench of this Court. She also raised a similar apprehension and the Division Bench took into consideration the stand taken by the same respondents and passed the following order on 10.03.2009.

6. This Court has carefully considered the rival submissions and also perused the materials placed before it.

7. It is relevant to extract paragraph nos.5 and 6 of the counter affidavit dated 15.09.2020, filed by the respondents 1, 4 and 5:

"5. I respectfully submit that the road taken up for strengthening does not pass through land bearing Survey Nos.19/1B, 19/0A, 19/2C, 20/3, 21/1, 21/4A1 and 22/1A of Azhinjivakkam Village



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(Uthukkottai Taluk, Thiruvallur District). Whereas the exact survey nos. of the above road are S.F.Nos.7/1. 7/2. 7/3. 7/4. 7/5, 7/6, 99/2. 99/2A, 99/2B, 84/3, 67, 69 and 70 and the petitioner's name is no found in the revenue records of these survey numbers. The petitioner's statement that highways department is entering into his agricultural land and started felling trees and caused huge damage and not following due process of law for land acquisition are false and incorrect.

6. I respectfully submit that Highways Department will only lay the road to the existing width of 3.75 m as per sanctioned estimate and will not do any widening of the road on the adjacent agricultural lands. The petitioner's statement that the Highways Department is attempting to acquire the property of the petitioner with the help of police without following due process of law is false and incorrect."

8. In the light of the categorical stand taken by the respondents 1, 4 and 5, this Court is of the considered view that the apprehension expressed by the petitioner, as to the illegal trespass and attempt to lay a road, is prima facie unfounded. Of course, in the light of the stand taken by the respondents in the counter affidavit, especially in paragraphs



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5 and 6, it is not open to the official respondents concerned, to take law into their own hand and interfere with the possession of the petitioner's land, which is the subject matter of registered Sale Deed dated 17.02.2011, bearing Doc.No.959/2011, registered on the file of the Sub-Registrar Office, Arni.

9. In the result, the Writ Petition is closed, by taking note of the stand of the respondents 1, 4 and 5 in paragraph nos.5 and 6 of the counter affidavit dated 15.09.2020 and the interim order of Status Quo granted, stands vacated. No costs. Consequently all connected miscellaneous petitions are closed.

11.The stand taken by the respondents in these writ petitions are not different from the stand that was taken in the writ petition filed in W.P.No.10619 of 2020. Hence, the order passed by the Division Bench by clarifying the work that is to be undertaken by the respondents and protecting the patta land of the petitioner, can be followed in these writ petitions also.

12.In view of the above, the apprehension raised by the petitioners has been sufficiently answered by the respondents and it is made clear that the work undertaken by the respondents will confine itself to the



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strengthening of the existing road and the patta lands of the petitioners will not be interfered. If in case, the respondents want to widen the existing road, the same will be done only by following the due process of law under the relevant Land Acquisition Enactment. The possession of the petitioners in the subject properties will not be interfered otherwise.

13.Both the writ petitions are disposed of in the above terms. No Costs. Consequently, connected miscellaneous petitions are closed.

30.06.2022

Internet : Yes

(3/3)

Index : Yes

Speaking Order / Non Speaking Order
ssr

To

1.The Principal Secretary,
High Ways and Minor Ports (HF-1) Department,
Fort St. George,
Chennai – 600 009.

2.The District Collector,
Tiruvallur District.

3.The Tahsildar,
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Tiruvallur District.

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- 4.The Chief Engineer (NABARD & Rural Roads)
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- 5.The Assistant Engineer,
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N. ANAND VENKATESH, J.

ssr

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(3/3)