



W.P.(MD) No.8468 of 2018.

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2022

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

**W.P.(MD) No.8468 of 2018
and
W.M.P.(MD) No.7990 of 2018**

S.Ramalingam

... Petitioner

/vs./

- 1.The District Collector,
Thoothukudi District,
Thoothukudi.
- 2.The Revenue Divisional Officer,
Srivaikundam Taluk,
Thoothukudi District.
- 3.The Tahsildar,
Srivaikundam Taluk,
Thoothukudi District.
- 4.The Block Development Officer,
Srivaikundam Taluk,
Thoothukudi District.
- 5.The Inspector of Police,
Eral Police Station,
Thoothukudi District.



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6.The President,
Vallavalan Panchayat,
Srivaikundam Taluk,
Thoothukudi District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the Respondents to remove the road laid down in the petitioner's patta land in Survey No.140/4A at Vallavalan Village, Srivaikundam Taluk, Thoothukudi District in furtherance of the proceedings of the 1st respondent in UNI/891/2016 dated 18.10.2016.

For Petitioner : Mr.M.Natarajan

For R1 to R5 : Mrs.D.Farjana Ghoushia
Special Government Pleader

ORDER

The instant writ petition has been filed seeking for a Writ of Mandamus directing the respondents to remove the road laid down in the petitioner's patta land in S.No.140/4A at Vallavalan Village, Srivaikundam Taluk, Thoothukudi District in compliance with the proceedings of the first respondent in UNI/891/2016 dated 18.10.2016 within the period that may be stipulated by this Court.



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Heard Mr.M.Natarajan, learned counsel for the petitioner and Mrs.D.Farjana Ghoushia, learned Special Government Pleader for the respondents 1 to 5.

3.The case of the petitioner is that in the land belonging to the petitioner, the fourth respondent started laying road and therefore, the petitioner had approached the respondents and objected to the laying of road. As there was no response, the petitioner had approached this Court in W.P.(MD) No.1950 of 2016 seeking for a Mandamus to remove the road laid in his land.

4.By order dated 29.01.2016, this Court was pleased to dispose of the said writ petition by directing the first respondent herein to consider the representation of the petitioner and pass appropriate orders within a period of twelve weeks from the date of receipt of a copy of that order. The first respondent had passed an order on 18.10.2016 holding that a road has been laid in the petitioner's property. In spite of giving a finding that a road has been laid in the petitioner's property, considering the fact that it has been put to use by the general public, the first



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respondent had directed the petitioner to lay the cement road in the land belonging to the sixth respondent Panchayat with the cooperation of the respondents 4 and 5, thereafter remove the pathway put up in the petitioner's land. In spite of the order passed by the first respondent, neither the fifth respondent nor the fourth respondent had not identified the land, in which the petitioner should lay the road. A proceeding has also been issued by the fourth respondent to the Inspector of Police to provide police protection to survey the land and thereafter, nothing was happened. Therefore, the petitioner had approached this Court to implement the orders passed by the first respondent.

5.Countering his arguments, Mrs.D.Farjana Ghoushia, learned Special Government Pleader for the respondents 1 to 5 relying upon the counter affidavit filed by the fourth respondent/the Block Development Officer would submit that the pathway in the petitioner's land was in existence and has been upgraded into a concrete road during the year 2005 at a cost of Rs.75,000/-. She would also submit that the petitioner himself had encroached upon a portion of the Panchayat land adjoining to S.No.140/4B.



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6.She would further submit that the present writ petition has been filed with an ulterior motive to grab the land of the Panchayat. She would further submit that removal of public road, which is being used by the public and any disruption of the road will cause inconvenience to the school going children and other villagers and therefore, she prayed to dismiss this writ petition.

7.I have considered the rival submissions made by the learned counsel appearing on either side.

8.It is an unfortunate case, where the intervention of this Court is sought for to execute an order passed by the first respondent/the District Collector. The first respondent in his proceedings dated 18.10.2016 has specifically held that the public road has been laid over in a private property. It had also been held that such an action has been made due to the mistake committed by the then President and the Assistant Engineer attached to the said Panchayat. Considering the fact that by expending Rs.75,000/-, a road has been laid, the first respondent had directed the petitioner to lay the road at his cost in the Panchayat land and



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thereafter, remove the road laid in his property. The petitioner accepting the order passed by the first respondent had not challenged the same. But however, even till the year 2018, no action has been initiated and only by proceedings dated 15.03.2018, the fourth respondent had sought protection by the police for surveying the land on 22.03.2018. Even thereafter, nothing was happened. Hence, the petitioner had moved this Court with the instant writ petition on 16.04.2018.

9.Now a counter has been filed by the fourth respondent alleging that the first respondent after conducting an enquiry had ordered the petitioner to remit the public fund of Rs.72,000/- spent for the formation of public road. The relevant averment in the counter affidavit filed by the fourth respondent is extracted hereunder:-

“9..... As ordered by the Hon'ble High Court, the 1st respondent has conducted a detailed enquiry and ordered the petitioners to remit the public fund of Rs.72,000/- spent for the formation of public road in the panchayat land in S.No.140/4B and also accepted to handover the public road in S.No. 140/4A in the interest of public.....”

10.She would further contend that the petitioner while purchasing the land was fully aware of the existence of the public road and that he had encroached



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upon a portion of the Panchayat land adjoining to S.No.140/4B. The relevant portion of the counter affidavit is extracted hereunder:-

“10..... The petitioners have purchased the land in the year 2012 knowing fully about the existence of the public road for years together. Further, the petitioner has constructed a house in the adjoining panchayat land in S.No.140/4B and he has not stated anything about the Encroachment made in the panchayat land and has suppressed this vital aspect and approached this Hon'ble Court with unclean hands. The public money of Rs. 72,000/- have been invested in the formation of road by the panchayat authorities and the 1st respondent has ordered the petitioners to form the concrete road in panchayat land in S.No.40/4B and after formation of the same the authorities will restore the possession of the land in S.No. 140/4A.....”

11..... The public road was being used by the public and any disruption of the road will cause inconvenience to the school going children and other villagers. Hence, the petitioners were directed to form a road in the panchayat land in S.No.140/4b at their cost and the authorities have accepted to hand over the land in S.No.140/4A to them in order to avoid inconvenience to the village public. The orders of the 1st respondent is just and bonafide and are issued in the larger interest of public at large.....”



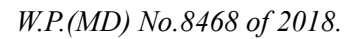
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11. Making such an averment extracted supra, the fourth respondent had prayed this Court to dismiss this writ petition as devoid of merits.

12. From the perusal of the order of the first respondent, it is seen that at no place the petitioner was directed to deposit a sum of Rs.72,000/-, which has been expended in laying the road in the petitioner's land. The first respondent had only taken into consideration that already the public money has been spent and he therefore had directed the petitioner to lay the road in the Panchayat land and thereafter, remove the road that had been constructed in the petitioner's land.

13. The averments made by the fourth respondent, namely, the deponent, A.Banu, W/o. P.Natarajan are an attempt to by-pass the order passed by the first respondent/the District Collector, who is the Superior Officer and also the Revenue Head of the District. The fourth respondent is bound to implement the orders passed by the first respondent and cannot make excuses in circumventing the orders passed by him. Further, due to the non-cooperation of the respondents 4 and 6, the order of the first respondent could not be implemented even till date. This attitude is, in my view, a callous attitude of the authorities. Further, this



14. In the light of the aforesaid findings, I am of the view that since the order of the first respondent has not been implemented even after the period of more than 6 years, I direct the respondents 4 and 6 to jointly lay the road in the Panchayat land within a period of eight weeks from the date of receipt of a copy of this order and to remove the road laid down in the petitioner's land within a period of two weeks thereafter. Since the petitioner had not challenged the order of the first respondent directing him to lay the road in the Panchayat land and that the cost of laying the road has been arrived at Rs.72,000/-, and such amount has been expended as early as in the year 2006 by the first respondent, I direct the petitioner to deposit a sum of Rs.1,00,000/- to the credit of sixth respondent Panchayat for laying of road in the Panchayat land as directed supra.

15. Considering the tenor, in which the fourth respondent had filed the counter affidavit opposing the writ petition, I am of the view that she should be imposed with cost of Rs.25,000/-. The said amount shall be paid by the first



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respondent to the petitioner within a period of four weeks from the date of receipt of a copy of this order and the same shall be recovered from the fourth respondent in her personal capacity. That apart, since the order of the first respondent was of the year 2016 and till date, the same has not been implemented, the cost of laying the road shall be collected from the persons holding the office of the respondents 4 and 6 between 18.10.2016 and the date of laying the road, which shall also be credited to the account of the sixth respondent Panchayat.

16. With the above directions, the Writ Petition is allowed. I hope that atleast hereafter, the persons holding the responsible post implement the orders passed by their higher Official within the reasonable period much less a stipulated period and not give raise to such writ petitions. Cost as stated supra. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
Internet : Yes / No
Index : Yes / No
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K.KUMARESH BABU, J.

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