



WEB COPY



W.P. No. 30912 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 30912 of 2023

and

W.M.P. Nos. 30555 and 30556 of 2023

1. Thenmozhi

2. Valarmathi

... Petitioners

-VS-

1. Assistant Collector (Development),
District Rural Development Agency,
Coimbatore.

2. The Commissioner,
Coimbatore Corporation,
Raja Street, Town Hall,
Coimbatore – 641001.

3. The Assistant Commissioner,
Coimbatore Corporation,
Central Zone, Race Course Road,
Coimbatore – 641018.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Respondents to desist from construction a Public Distribution Shop on the poosthi road in front of the property comprised in S. No. 322/2, Ramanathapuram Village, Coimbatore, measuring as extent of 13.5 cents and 332 sq.ft and consequently direct the Respondents to construct the same at any other alternate location.



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Coimbatore and it is yet to be divided by metes and bounds. It is further stated that there is a road classified as 'boosthuthi road' in front of the said property which provides access to it from Bharathi Nagar Main Road. While so, the First Respondent by Proceedings in Na.Ka. No. 3904/2022/Aa2 dated 05.01.2023 sent to the Second Respondent had proposed to construct a Public Distribution System (PDS) outlet at Bharathi Nagar Main Road in Ward No. 65, Central Zone, Coimbatore Corporation, and had identified the 'boosthuthi road' as its location. In that backdrop, this Writ Petition has been filed to restrain the Respondent from constructing the PDS outlet on the 'boosthuthi road' in front of the property claimed by the Petitioners and to consequently direct the Respondents to construct it at any other alternative place.

3. In response, the Second Respondent has filed Counter-Affidavit dated 02.11.2023 explaining that the 'booshthuthi road', which measures 18 feet West to East is used by the public, vests with the Second Respondent. Apart from it, a vast extent is still lying vacant in T.S. No. 45, Old S. No. 368/Part, belongs to the Second Respondent and has not been used at any time as road, and it has been identified as suitable land for constructing the PDS outlet of an extent of 449 sq.ft.(31 ft. x 14.6 ft.). It is complained that the Petitioners were illegally attempting to occupy the said portion of land meant for construction of PDS



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outlet, and when the notice dated 14.10.2023 was affixed at that site for removal of encroachment under Section 128 of the Tamil Nadu Urban Local Bodies Act, 1998, the Petitioners have filed this Writ Petition to circumvent it, which cannot be countenanced.

4. Having regard to the rival contentions, it is evident that the claim of the Petitioners fall within the realm of disputed questions of fact, which cannot be effectively determined by this Court in proceedings under Article 226 of the Constitution following summary procedure. It must be recapitulated here that the Hon'ble Supreme Court of India in the decision in ***Roshina T. -vs- Abdul Azeez K.T.*** [(2019) 2 SCC 329] has cautioned that such claims relating to property rights would have to be answered one way or the other only in a properly framed suit impleading necessary parties before the civil court. In such circumstances, the Petitioner has not been impeded from canvassing what is sought to be agitated in this Writ Petition in the aforesaid remedy and there is no acceptable explanation from the Petitioner for not having availed it. In that view of the matter, this Court is not inclined to entertain this Writ Petition or delve into the merits of the controversy involved.



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5. At the same time, it is made clear that nothing said in this order shall be construed as creating any fetter on the powers of the concerned authorities to take action against the Petitioners in accordance with law if they have encroached upon public property under the guise of using it as access to their private property.

In the result, the Writ Petition is disposed with the aforesaid observations. Consequently, the connected Miscellaneous Petitions are closed.
No costs.

02.11.2023

kv

Index: Yes/No

Note: Issue order copy by 05.06.2024.

To

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P.D. AUDIKESAVALU, J.

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