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W.A.(MD)Nos.859 of 2013 etc. batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.A.(MD)Nos.859 to 863 of 2013

and

M.P.(MD)Nos.1, 2, 1 to 3, 1, 2, 1 and 2 of 2013

and

W.P.(MD)Nos.16695 of 2012, 10095, 11919, 14035, 16733, 16734 and 16924 of 2013 and 3791 and 5204 of 2014 and 3076 and 22895 of 2019

and

M.P.(MD)Nos.1 of 2012 and 1, 2, 1, 2, 1, 2, 1, 2, 1 to 4 of 2013 and 1 and 2 of 2014 and W.M.P.(MD)No.18790 of 2023

W.A.(MD)No.859 of 2013

1.The Executive Authority / Commissioner,
Theni-Allinagaram Local Planning Authority / Municipality,
Theni-Alinagaram, Theni District.

2.The Commissioner,
Theni-Allinagaram Municipality,
Theni.

... Appellants

Vs.

1.C.Arivalagan
2.The Director of Town and Country Planning,
Government of Tamil Nadu, Chennai.

3.The Joint Director of Town and Country Planning,
Government of Tamil Nadu, Chennai.



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4.The Regional Deputy Director of
Town and Country Planning,
Madurai-02.

5.The Divisional Engineer,
State Highways, Theni Division,
Theni District.

6.The District Collector,
Theni District, Theni.

7.The Superintending Engineer,
Construction and Maintenance,
State Highways Department,
Madurai.

8.The District Revenue Officer,
Theni District.

...Respondents

(R7 and R8 are *suo motu* impleaded vide common order dated 11.10.2023 made in W.A.(MD)Nos.859 to 863 of 2013 etc., batch)

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed in W.P.(MD)No.15119 of 2012, dated 30.04.2013 on the file of this Court.

For Appellant	: Mr.K.Hemakarthiskeyan
For R1	: Mr.J.Anandkumar
For R2 to R8	: Mr.R.Baskaran,
	Additional Advocate General,
	assisted by Mr.N.Satheesh Kumar,
	Additional Government Pleader



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W.P.(MD)No.16695 of 2012

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R.Rajavel

Vs.

... Petitioner

- 1.The District Collector Cum Chairman of
Local Planning Authority,
Theni, Theni District.
- 2.The Superintending Engineer,
Highways, Madurai.
- 3.The Divisional Engineer,
Highways, Theni, Theni District.
- 4.The Deputy Director of Town and Country Planning,
Madurai.
- 5.The Superintending Engineer,
Construction and Maintenance,
State Highways Department, Madurai.
- 6.The District Revenue Officer,
Theni District.

...Respondents

(R5 and R6 are suo motu impleaded vide Court dated 11.10.2023)

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents 1 to 4 from in any way disturbing the lawful possession of the lands belonging to the petitioner in Survey No.190 in T.S.No.2/1, Block No.1, situated at Allinagaram Village, Theni District except following due process of law.



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For Petitioner : Mr.B.Saravanan, Senior Counsel
For Mr.C.Jegannathan
For Respondents : Mr.N.Satheesh Kumar,
Additional Government Pleader

COMMON JUDGMENT

(Judgment of the Court was delivered by ***S.M.SUBRAMANIAM, J.***)

The batch of litigations have been instituted seeking multiple prayers, but issues raised revolved around public road between Theni and Periyakulam running through the villages Allinagaram, Vadaveeranaickanpatti and Unjampatti, which is a State Highway road.

2.It is not in dispute between the parties that the public road, which is now maintained, is under usage for about 43 years and certain portions of the private properties are utilized as road without any acquisition proceedings. Those land owners had graciously not claimed any compensation during the relevant point of time and allowed the Public Works Department to utilize the said portion of the road as public road.



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3.On account of act of grabbing of private lands by the Government authorities without acquisition proceedings, the individuals have filed certain Writ Petitions claiming that there cannot be any further expansion of road or re-alignment, which would cause infringement of their property right and in the event of any such proposal, acquisition proceedings are to be initiated in the manner known to law.

4.The respective learned Senior Counsels and the learned counsel appearing on behalf of the private parties mainly contended that the rights of the private parties are infringed on account of an act of land grabbing by the Government itself. The Government is not expected to grab the land without following due process of law.

5.The property right is a constitutional right under Article 300A of the Constitution of India and such right can be taken away only by following due process of law. Thus, this Court cannot approve the act of the departmental authorities in taking away the private property without following due process of law.



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6.In the present case, the existing thar road is under the usage of the public at large for the past about 43 years and the original owners during the relevant point of time had not initiated any action nor claimed any compensation and thus, the existing thar road need not be disturbed.

7.In view of the counter claim between number of private parties, who may have certain personal interest of developing their properties, since the market value of the property is high rocketing, agitating the issues by filing several Writ Petitions. In order to give quietus, we have passed an interim order on 11.10.2023 directing the Superintending Engineer, Construction and Maintenance, State Highways Department, Madurai and the District Revenue Officer, Theni District to conduct individual survey of the disputed portions of the existing road without reference to the sketch submitted by either of the parties and submit a report before this Court along with sketch on or before 01.11.2023.

8.In compliance with the said interim order passed by this Court, the Superintending Engineer, State Highways Department, Madurai and the District Revenue Officer, Theni District along with Town Sub Inspector of Survey, Allinagaram Municipality, Theni conducted joint survey. In result, sketch



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produced on 30.10.2023 by the learned Additional Government Pleader along with

status report reveals that the existing thar road has been marked as yellow colour.

As far as the existing thar road is concerned, none of the parties to the litigations have any objections including the usage of such thar road by public at large.

9.The learned Additional Government Pleader appearing for the State has made a submission that adjacent to the thar road, a mud road is also being utilized by the people and certain basic amenities are provided for the benefit of the people at large.

10.We have taken note of these factors. The status report filed by the Superintending Engineer, Construction and Maintenance, State Highways Department, Madurai, reveals that the present thar road from new bus stand of Theni Allinagaram leading to Periyakulam is the bye-pass road from south towards north through the villages of Allinagaram, Vadaveeranaickanpatti and Unjampatti reaches Periyakulam. The said road in Allinagaram is 7.30 meter width (black top road) and 305 meter length. The said road from the centre point of the thar road is comprised with thar road to an extent of 3.65 meters and mud road to an extent of 3 meters on the eastern side as well as 3.65 meters thar road and 3 meters mud road on the western side in total 13.30 meters width is usage.



11.It is brought to the notice of this Court that the mud road on either side are yet to be acquired by the Government and as of now, it vest with the private parties.

12.In view of the fact that the property right of these private individuals are infringed, they are before this Court. We are not inclined to go into the issues relating to the civil rights of the parties, but we are of the considered opinion that the Government is not expected to grab the lands of the private parties without following due process of law and therefore, the act of laying thar road or mud road without acquiring the land by the department at no circumstances be appreciated by this Court.

13.The existing thar road has been demarcated in the sketch filed along with the status report by the learned Additional Government Pleader, which is directed to be maintained for the public usage till such time, the Government acquire the required lands either for alignment, re-alignment or expansion of road or otherwise by initiating acquisition proceedings and by paying just compensation as contemplated under the land acquisition laws. Acquired lands can be utilized for expansion of road, alignment or re-alignment of the existing thar road or otherwise for the benefit of people at large / road users.



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14.In view of the facts and circumstances, the basic amenities / facilities provided to the people of that locality need not be disturbed and the Government is at liberty to initiate acquisition proceedings for further expansion of road or for re-alignment by following due process of law.

15.It is made clear that existing position of the thar road including mud road need not be disturbed by any private parties including the basic amenities provided for the benefit of the people of that locality. The Government is expected to proceed with the acquisition proceedings as expeditiously as possible in order to protect the area covering basic amenities provided for the benefit of the people of that locality and for further expansion or re-alignment of road projects in that locality. The respective private parties are also expected to consider the public interest involved in respect of the existing public road and the basic amenities already provided for the benefit of the people of that locality.

16.Insofar as the acquisition proceedings are concerned, the Government shall proceed by following the procedures as contemplated.

17.It is made clear that the Government is empowered to acquire the extent of the land, which is required for public purposes. However, without



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acquiring the land no further progresses are to be made. All changes, sub division, mutation of revenue records, grant of patta, cancellation of patta shall be undertaken by the revenue authorities under the relevant provisions of the statutes, after completion of the acquisition proceedings by the Government for the public purposes. The Government is expected to complete the acquisition proceedings as expeditiously as possible, since the property right of the individuals are in stake and they may not be in a position to deal with their property in the manner known to law.

18. With the above directions, all the Writ Petitions and the Writ Appeals are disposed of. The orders passed by the learned Single Judge are modified to the extent as stated above. No costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S., J.) & (V.L.N., J.)

02.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

Yuva

10/12



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