



W.P.(MD)No.7822 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 23.11.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.7822 of 2021
and
W.M.P.(MD)No.5967 of 2021

G.Alagesh Perumal

... Petitioner

vs.

1.The District Collector, Madura District.

2.The Commissioner,
Madurai City Municipal Corporation,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, forbearing the respondents from laying down any road or making any constructions in the subject properties in Survey No.131/9 measuring an extent of 60 cents and Survey No.131/7 measuring an extent of 21 cents in Auppanadi Village, Madurai South Taluk, Madurai District without resorting to land acquisition as per due process of law.



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For Petitioner :Mr.T.R.Jeyapalam
For R1 :Ms.D.Farjana Ghoushia
Special Government Pleader
For R2 :Mr.F.Deepak

ORDER

This Writ Petition has been filed for the issue of a Writ of Mandamus forbearing the respondents from laying any road in the subject property belonging to the petitioner Trust without following the due process of law.

2.The case of the petitioner is that the Trust is the owner of the subject property by virtue of a decree passed in O.S.No.524 of 2010 by the Principal Subordinate Court, Madurai, dated 04.08.2010, wherein, it was declared that the subject properties are Trust properties. That apart, the petitioner is also relying upon the Trust deed, that was executed on 21.08.1944. The grievance of the petitioner is that the second respondent started taking steps to lay a road in the subject property without following the due process of law. Even though a representation was made in this regard to the respondents on 10.03.2021, it did not evoke any response. It is under these circumstances, the present Writ Petition has been filed.

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3.The second respondent has filed a counter affidavit. The

relevant portions in the counter affidavit are extracted hereunder:

“3.It is submitted that the contention of the writ petitioner that the corporation is trying to laying the road in their property is false. Further, already there is a metal Road laid by the Chinthamani Panchayat. The said Road due to heavy rain was in a damaged position. The local residents have given representation for the repair of the metal road. Based on the representation the Corporation had undertaken the work to repair the road in a good motorable condition.

4.It is submitted that there is no new road formed or laid in the Survey Number mentioned in the writ petition by the writ petitioner. Further the writ petitioner has got no right over the property in the above said Survey No.131/9 measuring an extent of 60 Cents and Survey No.131/7 measuring an extent of 21 Cents in Anuppanadi village, Madurai South Taluk, Madurai District.

5.It is submitted that in W.P. (MD). No. 4686/2021, the Hon'ble Division Bench has held that when there is a disputed question the of fact arose the only remedy available to the petitioner is to approach the competent Civil Court. Further, the High Court under Article 226 of the Indian Constitution cannot conduct a roving enquiry.

5.It is submitted that with regard to the petitioner mentioned property the land belongs to one Velupillai. The said velupillai had two wives, namely, Irulayee Ammal and Thangammal had jointly executed a trust deed dated 21/08/1944. They had issued certain directions for performance of charities from out of the income of the subject properties. They had further recited that the subject properties cannot be alienated. But, Thangammal alone had subsequently executed two trust cancellation deeds dated 17/04/1986 and 18/06/1986 in respect of the subject properties and the properties were sold to different parties. Therefore, the writ petitioner has got no right over the properties. The writ petition is devoid of merits and hence liable to be dismissed with costs.”



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4. Heard Mr.T.R.Jeyapalam, learned Counsel appearing on behalf of the petitioner, Ms.D.Farjana Ghoushia, learned Special Government Pleader appearing on behalf of the first respondent and Mr.F.Deepak, learned Counsel for the second respondent.

5. It is the specific case of the petitioner that there was no road available in the subject property and that an attempt was made by the second respondent Corporation to lay a metal road without following the due process of law. Per contra, the stand taken by the second respondent Corporation is that there was already an existing road cutting across the property belonging to the petitioner and that the road got worn-out and representation has been made by the residents to repair the same. Pursuant to such representation, steps were taken to restore the road and make it more easier for the residents to have access over the same. Therefore, according to the second respondent, there was an existing road and now the petitioner Trust is attempting to prevent the second respondent from taking steps to repair the existing road.



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6.In the instant case, there is a clear factual dispute with regard to the existing road. This Court had an occasion to deal with the scope of Section 236 of the Coimbatore City Municipal Corporation Act, 1981 (which also applies to the Madurai Corporation) and this Court held that where there is a thorough fare for the general public to have access to a road through a private property, the same gets automatically vested with the Corporation. Useful reference can be made to the judgment of this Court in *M.Rajagopal vs Suresh and others* reported in **2023 (4) CTC 63**.

7.The above judgment passed by this Court cannot be directly applied to the present case, since there is a serious dispute with regard to the very existence of the road in the property belonging to the petitioner. This would require appreciation of evidence and that exercise cannot be carried out in a Writ jurisdiction.

8.In view of the above, if the second respondent is sure enough that there was an existing road through the private property belonging to the petitioner for a long period of time, it will be open to the second



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respondent to issue a notice to the petitioner and repair the said road. If the petitioner is aggrieved by the same, it is left open to the petitioner to work out their remedy before the competent Civil Court. Ultimately, it is the Civil Court, which can deal with the dispute, since it involves disputed questions of facts and it requires appreciation of evidence. This clarification will sufficiently take care of the grievances expressed on either side.

9.This Writ Petition is disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

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

23.11.2023

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To

The District Collector, Madura District.



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N.ANAND VENKATESH, J.

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