



W.P.(MD)No.10130 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.12.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.10130 of 2021

and

W.M.P.(MD).No.7855 of 2021

M.Davamani Rajan

... Petitioner

Vs.

- 1.Union of India,
Represented by its Secretary,
Ministry of Road Transport
and Highways Department,
New Delhi.
- 2.The Competent Authority cum
Special District Revenue Officer
(Land Acquisition) (NH-7A),
Thoothukudi,
Thoothukudi District.
- 3.The Project Director,
National Highways Authority of India,
No.2/273, First Floor,
P.S.P.Nagar (2nd Street),
Korampallam,
Thoothukudi District.
- 4.The Revenue Divisional Officer,
Thoothukudi,
Thoothukudi District.

... Respondents

*(R-4 is suo motu impleaded vide Court Order
dated 06.12.2023 in W.P.(MD).No.10130 of 2021)*



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, forbearing the respondents or their men from claim right and expanding the road beyond 55 sq.mts of the acquired land in Survey No.306/1A2, Kumaragiri Village, Pudukkottai, Thoothukudi Taluk, Thoothukudi District.

For Petitioner : Mr.R.J.Karthick

For R-1 : Mr.D.Saravanan
Central Government Standing Counsel

For R-2 and R-4 : Mr.B.Saravanan
Additional Government Pleader

For R-3 : Mr.Arul Vadivel @ Sekar
Senior Standing Counsel
For M/s.Arul Vadivel Associates

ORDER

The Revenue Divisional Officer, Thoothukudi, Thoothukudi District is *suo motu* impleaded as fourth respondent in this Writ Petition. The learned Additional Government Pleader takes notice on behalf of the impleaded fourth respondent.

2. This Writ Petition has been filed for issue of a Writ of Mandamus, forbearing the respondents from claiming any right or expanding their project beyond 55 square meters that was acquired from the petitioner in Survey



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No.306/1A2, Kumaragiri Village, Pudukkottai, Thoothukudi Taluk,
Thoothukudi District.

3. When the matter came up for hearing on 16.06.2021, this Court passed the following order:

“Mr.D.Saravanan, learned Central Government Standing Counsel, takes notice for the first respondent, Mr.S.Shanmugavel, learned Government Advocate takes notice for the second respondent and Mr.Arul Vadivel @ Sekar, learned Standing Counsel, takes notice for the third respondent.

2.The Specific case of the petitioner is that already an extent of 55 square meters was acquired for the purpose of extension of the Highways and it has been taken possession and award was also passed by fixing the compensation. The grievance of the petitioner is that the third respondent is attempting to encroach upon the remaining portion of the property of the petitioner without resorting to acquisition. Therefore, apprehending that the property will be forcibly taken over by the third respondent, the present writ petition has been filed before this Court.

3.A prima facie case has been made out by the petitioner and there shall be an order of interim injunction as prayed for.



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4. Post this case under the caption 'For Orders' on 30.06.2021.

5. In the meantime, the third respondent is directed to file counter affidavit.

6. The learned counsel for the petitioner shall immediately serve all the papers to the counsel appearing on behalf of the first and third respondents.

4. The matter was thereafter taken up for hearing on 02.07.2021 and this Court passed the following order:

“The learned Standing counsel appearing on behalf of the National Highways Authority of India submitted that the Highways Department has not encroached upon the property of the petitioner and it is the petitioner who has encroached and is attempting to put up a wall.

2. A solution can be found out if a survey is conducted in the presence of the petitioner and the property is measured. If it is found that the petitioner has encroached upon some portion of the 55 sq. meter that was acquired by the Department, it can be informed to the petitioner and the petitioner can accordingly put up the construction within his property. If on the other hand, the Highways Department has taken over more than 55 sq. meters, they can rectify the same and confine the laying of the road only to the property that was already acquired



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from the petitioner. This can be easily resolved if the petitioner co-operates with the Highways Department.

3.The survey shall be conducted on 07.07.2021, at 11.30 a.m. The petitioner shall be present at the site. A report shall be filed before this Court in the next date of hearing.

4.Post this case under the same caption on 19.07.2021.

5. Pursuant to the above order, the survey was conducted and a status report dated 04.12.2023 has been filed before this Court along with the sketch and photographs.

6. The necessity to undertake a fresh survey arose, since the measurement along with the sketch which was provided after the first survey was made, was found to suffer from some discrepancies. After the first inspection, the third respondent had taken the following stand:

“After acquisition of 55 sq.mts, the balance extent to be with the petitioner as per his records was cross checked by all boundaries and it is tallied as follows:



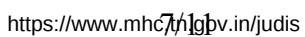
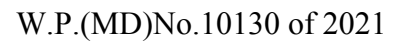
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1.	<i>The petitioner holding as per document</i>	<i>4.545 cents</i>
2.	<i>Land acquired by NHAI</i>	<i>55 Sq.mtrs</i>
3.	<i>Balance land should be with the petitioner within him compound wall</i>	<i>129 sq.mtr.</i>
4.	<i>But the present holdings within his compound wall.</i>	<i>150 sq.mtrs</i>
5.	<i>Encroachment by petitioner in NHAI land</i>	<i>20 sq.mtrs</i>

A sketch in detail duly colour marked is attached along with photographs for kind perusal.”

7. The above measurements were found to be *prima facie* defective, since the petitioner was holding the right and title for an extent of 217.06 square meters (2038.66 square feet). Out of this, 55 square meters was admittedly acquired by NHAI. Hence, the balance land over which the petitioner had right and title was an extent of 162.06 square meters. However, it was mentioned as 129 square meters in the report after the first inspection. In view of the same, the third respondent had come to the conclusion that the petitioner had encroached upon the lands belonging to the NHAI.

8. After the second inspection was made, a status report has been filed before this Court along with the sketch. For proper appreciation, the sketch filed with the report is scanned and extracted as under:





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9. On going through the report and the sketch, it is seen that the first and second portion coloured as blue and green measuring an extent of 55 square meters (39 square meters + 16 square meters) is the portion that was acquired from the petitioner. There is no dispute with regard to the same and the petitioner has also been paid the compensation for the said acquisition. The third portion marked in pink measuring an extent of 12 square meters is shown to be a portion which neither belongs to the petitioner nor to the NHAI. The last portion coloured yellow measuring an extent of 150 square meters is shown to be the balance land belonging to the petitioner.

10. The learned counsel for the petitioner fairly submitted that insofar as the second portion which is coloured green, it belongs to the NHAI and there is a existing building in this portion and the same will be removed and the possession will be handed over to the NHAI. The learned counsel further submitted that the portion marked pink and yellow, totally measuring 162 square meters belongs to the petitioner. However, the NHAI has shown as if the pink marked portion does not belong to the petitioner and this mistake has been caused only due to the wrong entry that has been made in the FMB which requires correction. The learned Standing Counsel for NHAI submitted that the Highways Department does not have any claim over the property marked pink in the sketch.



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11. In the light of the clarity that has been reached by virtue of the second inspection and the report filed before this Court along with the sketch and the photographs, this Court issues the following directions:

(a) The portion of property coloured green measuring an extent of 16 square meters belongs to the NHAI and that portion must be handed over by the petitioner to the NHAI on or before 05.01.2024;

(b) The petitioner is directed to make a fresh representation before the impleaded fourth respondent and seek for a correction in the FMB with respect to the pink marked portion measuring an extent of 12 square meters. The impleaded fourth respondent, on receipt of the representation and after going through the relevant documents submitted by the petitioner, shall effect necessary changes in the FMB within a period of eight (8) weeks from the date of receipt of the representation from the petitioner; and

(c) The petitioner will be considered to be the rightful owner of the property measuring to an extent of 162.06 square meters at Survey No. 306/1A2B. This is also fortified by the fact that the petitioner has been issued patta for this extent in Patta No.2663.



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12. This Writ Petition is disposed of, in the above terms. No costs.

Consequently, connected miscellaneous petition is closed.

06.12.2023

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

To

- 1.The Secretary
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Ministry of Road Transport
and Highways Department,
New Delhi.
- 2.The Competent Authority cum
Special District Revenue Officer
(Land Acquisition) (NH-7A),
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N.ANAND VENKATESH, J.

Nsr

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