



W.P.(MD).No.13382 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 07.11.2022

ORDER PRONOUNCED ON : 03.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).Nos.13382 and 13383 of 2015
and M.P(MD).No.2 of 2015
& WMP(MD).No.15695 of 2020 and MP(MD).No.1 of 2015,
WMP(MD).Nos. 13961 of 2017 and 15710 of 2020**

1.N.Shobhana

2.N.Manjula

... Petitioners in WP.No.13382 of 2015

3.R.Nagendrkrishnan

...Petitioner in WP.No.13383 of 2015

-VS-

1.The Divisional Railway Manager (works)
Southern Railways, Salem Division
Salem District 636 001

2.The Section Engineer (Works)
Sub-Division, Southern Railway
Karur 639 001

3.The Assistant Divisional Engineer
Karur Sub-Division, Southern Railway
Karur 639 001

4.The District Collector
Office of the District Collectorate
Karur District



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5.The Revenue Divisional Officer
Office of the Revenue Divisional Officer
Karur, Karur District 639 001

6.The Thasildar
Office of the Taluk Office
Karur, Karur District 639 001

....Respondents
in both petitions

Common Prayer: These Petitions have been filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent dated 01.11.2013 under his proceedings No.SA/W372/WAYLEAVE and quash the same as ultra virus, void, illegal and consequently directing the respondents to provide way to the petitioners under the light of easement right of the petitioners over the land in T.S.No. 103/2, to reach their properties.

(In both Writ petitions)

For Petitioners	: Mr.M.Ponniah
For R1 to R3	:Mrs.L.Victoria Gowri Deputy Solicitor General of India
For R4 to R6	: Mr.A.Baskaran Additional Government Pleader

COMMON ORDER

W.P(MD).No.13383 of 2015 has been filed by one Nagendrkrishnan and W.P(MD).No.13382 of 2015 has been filed by his daughters.

2.These writ petitions have been filed challenging the same impugned



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order passed by the first respondent herein under which he has rejected the request of the petitioners for way leave for passage through approach road of the railway which leads to the main road.

3.The petitioners have contended that their grandfather namely Thiru.Ramdas was the owner of T.S.Nos.103 and 107 having an extent of 43,717 sq.ft. Out of the said extent of the land, an extent of 33,602 sq.ft (77 cents) were acquired by the Southern Railway in the year 1984 for the purpose of formation of Karur-Dindigul Board-guage Railway line. After acquisition, T.S.No.103 was sub-divided into many sub-divisions. Out of which T.S.Nos.103/1 and 103/3 remained the private properties of the petitioners' grandfather. The portion of the property that was acquired by the railways was classified as T.S.No.103/2.

4.The petitioners have further contended that a road has been laid in T.S.No.103/2 which connects the parking area of the railway station with main road. The petitioners have further contended that T.S.No.103/1 is located on the western side of the road and T.S.No.103/3 is located on the eastern side of the road. In other words, the road intercepts the private properties of the petitioners. The petitioners have further submitted that a portion of T.S.Nos.103 and 107 are being utilised by the railways as parking area.



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5.The petitioners have further stated that they have to reach the main road only by entering into T.S.No.103/2. They have no other access to reach the main road. They have been enjoying the road access through T.S.No. 103/2 from the year 1984 onwards. Suddenly, in the year 2011 when the petitioners's father was away from the town, the railways have constructed a parapet wall obstructing the access of the petitioners into their private properties which is located on both sides of the road. After construction of the said parapet wall, the petitioners have lost all their access to their private properties in T.S.Nos.103/1 and T.S.No.103/3.

6.The petitioners have further contended that their father has sent several representations to various authorities for opening up an access into the road so that the petitioners would reach the main road. One such representation was addressed to the fourth respondent herein on 11.02.2013. In turn, the fourth respondent has forwarded the complaint to the Revenue Divisional Officer, Karur. The Revenue Divisional Officer, Karur had directed the Tahsildhar to inspect the property and file a report in respect of the physical feature of the properties. The sixth respondent had submitted a report on 03.09.2013 to the fifth respondent herein to the effect that the petitioners do not have any other access other than the road in T.S.No.103/2 and he has also recommended for 10 feet pathway for the petitioners. Based



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upon the said report, the fifth respondent has addressed a communication to the first respondent herein requesting him to provide a 10 feet pathway for the writ petitioners. The said request has been rejected by the first respondent under the impugned order dated 01.11.2013. The said order is under challenge in the present writ petition.

7.The learned counsel for the petitioners had contended that the petitioners' grandfather was the owner of the entire extent of T.S.No.103. In the middle of T.S.No.103, an extent of 33,602 sq.ft has been acquired by the railways. It has resulted in bifurcation of their properties into two halves and the only access to the main road will be through the acquired property. A Thar road has been laid by the railways in the acquired property namely T.S.No. 103/2. The said Thar road connects the parking area of the railway station to the main road maintained by the State Government. Unless the petitioners are provided with an access into T.S.No.103/2, the private properties would become landlocked and they cannot use their property.

8.The learned counsel for the petitioners had further contended that Section 16 and 17 of the Railways Act, 1989 empowers the Railway Authorities to provide access to the occupier of the lands adjoining the railways subject to certain conditions. The learned counsel had also relied upon a circular of the Railway Board dated 27.11.2001 under which various guidelines have been issued for grant of such access. He had further



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contended that their right to property which is Constitutional right would get affected unless an access is provided to the un-acquired property through the acquired property.

9.The learned counsel for the petitioners had further contended that T.S.No.103/2 is a road which connects parking area of the railway junction and the main road maintained by the State Government. Hence, the access given to the petitioners to enter into T.S.No.103/2 would not in any way affect the passenger movement or safety and security of the rail users. The general public as a matter of right are entitled to enter into T.S.No.103/2 from the main road to reach the parking area. There are no restrictions for entering of the general public from the main road into the connecting road in T.S.No. 103/2. In such view of the matter, rejecting access to the writ petitioners is not legally sustainable. Hence, he prayed for allowing the writ petition.

10.Per contra, the learned Deputy Solicitor General appearing for the Railways had filed a counter and contended that the Thar road in T.S.No. 103/2 directly enters into the circulating area namely the railway station area and hence, that would affect the day to day passenger's movement. In Paragraph No.5 of the counter, the Railway Board order dated 27.11.2001 has been referred to. But they have contended that any way leave facility on the railway land should not affect the title, possession, control and use of the



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railways. The learned Deputy Solicitor General had further contended that the way leave facility in the said location is not feasible and the approach road has been laid only for easy approach of the passenger to the station and the construction of the compound wall on both side of the road is only for safety and safeguard of the railway asset. Hence, she prayed for dismissal of the writ petition.

11.I have considered the submissions made on either side and perused the materials available on record.

12.The petitioners' grandfather was the owner of an extent of 43,717 sq.ft of land in T.S.Nos.103 and 107. Out of the said extent, an extent of 33,602 sq.ft was acquired by the Southern Railway. After acquisition, the petitioners' private property has been bifurcated into two halves with T.S.Nos. 103/1 and 103/2. In T.S.No.103/2, the railways have laid an approach road connecting the main road (maintained by the State Government) with the parking area of the railway station. In the year 2011, the railways have constructed a compound wall on either side of the road thereby completely closing the access to T.S.Nos.103/1 and 103/3. Because of the construction of this compound wall, the petitioners' land in T.S.Nos.103/1 and 103/3 have become landlocked and there is no access in any direction to the said T.S.Numbers. These facts are not in dispute.



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13. The petitioners have filed a rough sketch in Page No.56 of the typed set indicating the location of various T.S.Numbers, main road, parking area and railway junction. No contrary rough sketch has been filed on the said of the railways. The said rough sketch has not been disputed in the counter filed by the respondents. Therefore, this Court would like to rely upon the said rough sketch for deciding the writ petition.

14.The Revenue Authorities namely the Tahsildhar and the Revenue Divisional Officer have submitted a report to the District Collector to the effect that the petitioners' private properties in T.S.Nos.103/1 and 103/3 have no access whatsoever except through T.S.No.103/2. They have also recommended to the railways to grant 10 feet access to the writ petitioners so that the property in T.S.No.103/1 and T.S.No.103/3 could be enjoyed by the petitioners. However, the said request has been rejected by the Railway Authority under the impugned order.

15.Section 16 of the Railways Act, 1989 is extracted as follows:

16. Accommodation works.—(1) A railway administration shall make and maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway, namely:—

(a) such crossings, bridges, culverts and passages over, under or by the sides of, or leading to or from, the railway as may, in the opinion of the State Government, be necessary for the purpose of



making good any interruptions caused by the railway to the use of the lands through which the railway is made; and

(b) all necessary bridges, tunnels, culverts, drains, water sources or other passages, over, under or by the sides of the railway, of such dimensions as will, in the opinion of the State Government, be sufficient at all times to convey water as freely from or to the lands lying near or affected by the railway as it was before the making of the railway or as nearly as possible.

(2) Subject to the other provisions of this Act, the works specified in sub-section (1) shall be made at the cost of the railway administration during or immediately after the laying out or formation of the railway over the lands traversed and in such a manner as to cause as little damage or inconvenience as possible to persons interested in the lands or affected by the works:

Provided that—

(a) a railway administration shall not be required to make any administration shall be liable to execute any further or additional the working or using of the railway, or to make any accommodation works with respect to which the owners or occupiers of the lands have been paid compensation in consideration of their not requiring the said works to be made;

(b) save as hereinafter, in this Chapter, provided, no railway administration shall be liable to execute any further or additional accommodation works for the use of the owners or occupiers of the lands after the expiration of ten years from the date on which the railway passing through the lands was first opened for public traffic;

(c) where a railway administration has provided suitable accommodation work for the crossing of a road or stream and the road



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or stream is afterwards diverted by the act or neglect of the person having the control thereof, the railway administration shall not be compelled to provide any other accommodation work for the crossing of such road or stream.

(3) The State Government may specify a date for the commencement of any work to be executed under sub-section (1) and, if within three months next after that date, the railway administration fails to commence the work or having commenced it, fails to proceed diligently to execute it, the Central Government shall, on such failure being brought to its notice by the State Government, issue such directions to the railway administration as it thinks fit.

Explanation.—For the purposes of this section, the expression “lands” shall include public roads.

16.The railway board has issued a circular on 27.11.2001 framing policy regarding grant of way leave facilities/easement rights on the railway land. Paragraph Nos.2 to 5 are extracted as follows:

“2. Sections 16 and 17 of the Railways Act, 1989 enjoin upon the Railways to make and maintain specified works for the accommodation of the owners and occupiers of the lands adjoining the railway, for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway is made. Such works include crossings, passages, drains, water courses etc. Apart from these, requests are often received for provision of way leave/easement on railway land in the form of passage/access to private houses and establishments, underground pipelines for water supply and sewerage,



electrical and telecommunication lines, etc. In many cases, these are unavoidable in view of the very nature and extent of the railway alignment.

3.Requests for granting way leave facilities/easement rights, therefore, need to be considered with due regard to the circumstances of each case. Some such illustrative circumstances include:-

(i).Non-availability of any other means of access to properties/houses;

(ii).Non-feasibility of provision of water supply, electricity, sewerages, etc. from any other direction.

4. By its very definition, way leave facility/easement right on railway land involves occasional or limited use of land by a party for a specified purpose like passage etc., without conferring upon the party any right of possession or occupation of the land and without in any way affecting the Railways' title, possession, control and sue of the land.

5.In genuine and unavoidable cases, way leave facility/easement right may be allowed after execution of proper agreements. It may be noted that the land is not licensed, but only permission granted for a limited use which is to be specified in detail in the agreement. To avoid any misunderstanding on this score, the agreement should not use terms like 'Licence' and 'Licence fee', but only ' permission' and 'way leave charges'. The agreement should also clearly stipulate that the Railway Administration retains full rights to enter upon, pass through or use the land, at any time, without any notice to the party. In the event of the way leave facility being discontinued with, the Railway will neither be liable to pay any compensation or reimburse any amount to the party, nor to provide any alternative arrangement for access, etc. In such a case, any installations like underground pipelines, etc. put up by the party are



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liable to be removed/shifted by the party at its own cost”.

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17.A perusal of Section 16 of the Railways Act, 1989 read with Railway Board Circular dated 27.11.2001, makes it clear that there is a duty cast upon the Railway Administration to maintain various works for accommodation of the owners and occupiers of the lands adjoining the railways. Paragraph No.2 of the Railway Board Circular specifically refers to the request relating to way leave /easement on railway land in the form of passage/access to private houses and establishments. Paragraph No.3 of the said Circular provides certain illustrative circumstances under which such way leave facilities/easement rights can be granted. One of the illustration is that the non-availability of any other means of access to properties/houses. As per Paragraph Nos. 4 and 5 of the said Circular, for limited/specified purpose, way leave facility/easement right on railway land would be granted without conferring right of possession or occupation after execution of proper agreement. Paragraph No.6 provides rates for grant that may be levied for grant of way leave facility/easement rights on the railway land.

18.In the present case, there is no dispute whatsoever that the petitioners have no other access to their private properties. The private properties of the petitioners have become land locked only due to the acquisition proceedings of the railways which has bifurcated the property of



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the petitioners into two halves. The Revenue Authorities have also categorically found that the petitioners do not have any other access.

19.By way of additional typed set of papers, the petitioners have also brought to the notice of this Court that a similar request for way leave facility by one R.Santhi was accepted by the first respondent herein after entering into an agreement. According to the petitioners, the said way leave facility is much closure to the railway land than the one which is sought for by the writ petitioners. The petitioners have contended that they have been discriminated. The said typed set of papers have been served on the learned counsel for the respondents on 10.08.2022. Though a counter was filed by the first respondent on 23.09.2022, there is no reference or answer to the said allegation.

20.A perusal of the rough sketch filed by the petitioners will clearly establish that T.S.No.103/2 is an approach road connection Rathinam Road (maintained by the State Government) and the parking area of the railway junction. This approach road runs in the North-South direction. The parking area of the railway junction is located at the northern end of the approach road and the said Rathinam Road is located on the southern end of the approach road. The petitioners have to enter into this approach road and turn southwards to reach the Rathinam Road. This approach road does not lead to



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the entry point of the railway junction which is secured by the railway guards.

This approach road enters only into the parking area of the junction where various private vehicles and auto-rickshaws are parked. There is no restriction whatsoever to enter into this approach road from the Rathinam Road to reach the parking area. Therefore, it is clear that the approach road does not enter into the circulating area of the railway junction. Having acquired a portion of the property from the writ petitioners, the railway authorities are duty bound to provide access to the petitioners, in such a manner that it would not affect the safety and security of the Railway Administration and their assets. Any way leave facility or easementary right granted to the writ petitioners would not in any way affect the right, title, possession or administration of the railways over T.S.No.103/2 which is frequented by the general public without any restriction. The request for access has been rejected by the railway authorities under the impugned order on the only ground that it would endanger the passengers and passengers' properties and it would cause inconvenience to the passengers and the rail users.

21.The discussion made supra will clearly disclose that no inconvenience is likely to be caused to the passengers or rail users and it would not endanger the passengers or passengers' properties. Therefore, this Court finds that the reasons assigned in the impugned order are not only



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factually incorrect but also legally not sustainable. The Revenue Authorities have recommended for 10 feet access from T.S.Nos.103/1 and 103/3 into approach road in T.S.No.103/2. The said recommendation seems to be a reasonable one, considering the fact that the petitioners' family have lost almost 70% of their land in the acquisition proceedings.

22.In view of the above said facts, the order impugned in the writ petitions is set aside. The first respondent is directed to provide access to the petitioners by way of way leave facility after execution of proper agreement as contemplated in Railways Board Circular dated 27.11.2001.

23.With the above observation, both the writ petitions stand allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petitions are closed.

03.01.2023

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To

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Southern Railways, Salem Division
Salem District 636 001

2.The Section Engineer (Works)
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R.VIJAYAKUMAR, J.

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Pre-delivery common order made in

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