



W.P.(MD)No.20514 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.20514 of 2021

Abdulkalam

... Petitioner

Vs

1.The District Collector,
Tirunelveli District, Tirunelveli.

2.The Superintendent Engineer,
Highways Department,
Tirunelveli Circle,
Tirunelveli District

3.The Assistant Divisional Engineer,
Highways Department,
Nanguneri Sub Division,
Nanguneri.

4.The Tahsildar, Nanguneri. ...Respondents
(Respondent No.4 is suo motu impleaded as per Order of this Court dated
16.11.2023 made in W.P.(MD).No.20514 of 2021)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the Respondents 1 to 3 to sanction compensation for acquisition of the petitioner's land in Survey Nos.616/2, 617/1 and 618/1 to the total extent of 5 cents situated at Ervadi



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Part I Village, Nanguneri Taluk, Tirunelveli District, by considering the petitioner's representation dated 16-08-2021 within a time stipulated as framed by this Court.

For Petitioner : Mr.C.K.M.Appaji
For R-1 to R-4 : Mr.R.Ragavendran,
Government Advocate

ORDER

The Tahsildar, Nanguneri, is *suo motu* added as the fourth respondent in this Writ Petition. Mr.R.Ragavendran, learned Government Advocate takes notice for the newly impleaded fourth respondent.

2. This Writ Petition has been filed for the issue of writ of mandamus directing respondent Nos.1 to 3 to sanction compensation to the petitioner based on the representation made by the petitioner on 16.08.2021.

3. The case of the petitioner is that the subject properties in Survey Nos.616/2, 617/1 and 618/1 measuring an extent of 46 Cents at Ervadi Village belonged to the family of the petitioner. The further case of the petitioner is that the third respondent without issuing any notice,



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occupied the property to an extent of five cents. According to the petitioner, this was done by the State Highways Department without the consent of the owner of the property. In view of the same, the petitioner made a representation dated 16.08.2021 seeking for compensation. Since the same was not considered, the present Writ Petition was filed before this Court.

4. The third respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

“2. It is humbly submitted that the Highways, Construction and Maintenance Department of Nanguneri neither laid any extension of road nor acquired land for laying road. The Department have construct the retaining wall belonging to the Highways Department and was completed on 07.03.2021.

3. I submitted that Mrs.Subbulakshmi is the owner of the land with Survey Nos.616/2, 617/1, 618/1 which is adjacent to the retaining wall built by the Highways Department. Mrs.Subbulakshmi has consented while constructing the retaining wall adjacent to her



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land, which the petitioner is claiming as his own property.

4. It is submitted that the land was owned by Mrs.Subbulakshmi which was ensured by the Revenue Department A-Register of the Village Administration Office. The owner of the land Mrs.Subbulakshmi in her hand written statement dated 27.10.2021 declared that she has no issues before and after the construction of retaining wall built in the highways land. So the petitioner has no right for claiming the ownership of the property raised for dispute.”

5. Heard the learned counsel on either side.

6. The learned counsel for the petitioner submitted that Subbulakshmi is the first wife of the petitioner and there was some dispute between the parties. Ultimately, the petitioner filed a Divorce Petition before the Sub Court, Valliyoor in H.M.O.P.No.02 of 2007 and the marriage was dissolved by the competent Court. Immediately thereafter, the petitioner applied for patta in his name and the patta was also issued in the name of the petitioner in Patta No.245. The learned counsel further



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submitted that since the said Subbulakshmi was questioning the right and title over the subject property, the petitioner filed a suit for declaration of title and permanent injunction in O.S.No.71 of 2007 before the District Munsif Court, Nanguneri. Initially, an *exparte* decree was passed on 21.08.2007. The said Subbulakshmi filed an application for setting aside the *exparte* decree and ultimately, the matter reached before this Court in C.R.P.(MD).No.1880 of 2021 and this Court allowed the Civil Revision Petition on 02.02.2022 and consequently, the suit was restored and the same is being contested by the said Subbulakshmi. The learned counsel further contended that the said Subbulakshmi did not have any right to give any concurrence to the Highways Department to construct the retaining wall adjacent to the property.

7. Per contra, the learned Government Advocate appearing on behalf of the respondents produced the entire material before this Court and submitted that the “A” Register stood in the name of Subbulakshmi and the said Subbulakshmi had also gave no objection for constructing the retaining wall adjacent to the property. This was acted upon by the Highways Department, since the said Subbulakshmi was the owner of the



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property. It was further contended that the third respondent has already sent a communication to the Tahsildar, Nanguneri, to conduct a survey in order to ascertain as to whether the retaining wall has been put up in the subject property and the survey is yet to be conducted.

8. In the considered view of this Court, this Court will not go into the *interse* dispute between the petitioner and the said Subbulakshmi. If the Highways Department has put up the retaining wall in the subject property, the compensation has to be necessarily paid. To whom such compensation has to be paid will depend upon the final result in the suit that is pending in O.S.No.71 of 2007.

9. In the meantime, the Tahsildar, Nanguneri, is directed to make a survey and ascertain as to whether the retaining wall has been laid in the subject properties in Survey Nos.616/2, 617/1 and 618/1 and report shall also be given to the third respondent within a period of four (4) weeks from the date of receipt of a copy of this order. If the report reveals the fact that the retaining wall has been constructed in the subject property, the same shall be intimated both to the petitioner as well as Subbulakshmi and



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the compensation shall be fixed to the extent to which the land has been acquired by the Highways Department. This amount shall be deposited in the pending suit in O.S.No.71 of 2007 and whoever succeeds in the suit, can take the compensation. If on the other hand, the report reveals the fact that the retaining wall has not been laid in the subject property, the same shall be intimated to the petitioner and the above said Subbulakshmi. In such a case, the dispute will confine itself to the right and title over the property between the petitioner and Subbulakshmi.

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

16.11.2023

NCC:yes/no

Index:yes/no

Internet:yes/no

tsg

To

1.The District Collector,Tirunelveli District, Tirunelveli.

2.The Superintendent Engineer,
Highways Department, Tirunelveli Circle, Tirunelveli District

3.The Assistant Divisional Engineer,
Highways Department, Nanguneri Sub Division, Nanguneri.



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N.ANAND VENKATESH, J.

tsg

4.The Tahsildar, Nanguneri.

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