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W.P.No.9338 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.9338 of 2017
and W.M.P.No.10315 of 2017

M.Chandrasekar

...Petitioner

-Vs -

1. The District Collector,
Thiruvannamalai District,
Thiruvannamalai.
2. The Block Development Officer
(Village Panchayat),
Melkodungallur Village Panchayat,
Kilkodungallur Post,
Thiruvannamalai District.
3. The Assistant Director of Land Survey,
Thiruvannamalai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 17.06.2016 in Na.Ka.No.m5/5211/2015/c/,/C/br/bfh/ passed by the first respondent herein and to quash the same and consequently direct the respondents to allot any alternate lands of the same market value in the said locality or in alternative to pay a sum of Rs.10,00,000/- (Rupees ten lakhs only) to



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the petitioner herein as compensation together with interest at 12% per annum from the year 2001 to till the date of payment.

For Petitioner : Mr.P.Subramanian
For Respondents
For R1 & R3 : Mr.S.J.Mohamed Sathik
Government Advocate
For R2 : Ms.C.Meera Arumugam

ORDER

This writ petition has been filed challenging the order dated 17.06.2016 passed by the first respondent, thereby rejected the request made by the petitioner seeking compensation for the road used by the general public.

2. The petitioner owned property comprised in survey No.11/3C ad measuring 0.01.5 acres situated at Vandavasi Taluk, Kilkodungallur, Cheyyar, under patta No.163. The property was settled in his favour by his grandmother on 16.02.2015 vide Settlement Deed registered in document No.296 of 2015. The petitioner also owned property adjacent to the said land comprised in survey No.11/3B ad measuring 0.00.5 acres and the property comprised in survey No.11/3D ad measuring 0.10.5 acres by way of the above settlement deed.



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3. While being so, the revenue officials laid road in the property comprised in survey No.11/3C ad measuring 0.01.5 acres viz., 1615 sq.ft., situated at Vandavasi Taluk, Kilkodungallur, Cheyyar. According to the petitioner, he is an absolute owner of the property and the revenue authority had no right to lay road. Therefore, the petitioner submitted representation on 22.05.2015 and the same was not considered as such the petitioner constrained to approach this Court in W.P.No.28808 of 2015. This Court directed the respondents to consider the representation by an order dated 14.09.2015. Thereafter, the said representation was considered and rejected by the first respondent in the impugned order. Hence the petitioner filed the present writ petition.

4. The learned counsel appearing for the petitioner submitted that admittedly the land in which, the road has been laid by the respondents, is a patta land. Though it was classified as boosthathi pathway, without acquiring the said land, the respondents cannot lay the road. Therefore, the respondents ought to have acquired the land in accordance with law and the petitioner is entitled for compensation. In support of his submission, he relied upon the judgment of the Hon'ble



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Supreme Court of India reported in **2014(2)SCC 269** in the case of ***Union of India and ors Vs. Vasavi Co. Op. Housing Society Ltd., & ors.***, which held that mere entries in revenue records as boosthathi thar road do not confer any title unless the private parties to whom the land belongs to execute conveyance deed or dedicate the same in favour of the panchayat or to local bodies and the panchayat cannot claim the said road as public road and cannot claim as a matter of right to pass through to make use of the same as pathway.

4.1. He further submitted that by following the above dictum laid down by the Hon'ble Supreme Court of India, this Court in the judgment reported in **2015(4) CTC 25** in the case of ***the Commissioner, Bhavani Municipality, Bhavani Vs C.Ramasamy and ors.***, held that in the absence of any dedication or conveyance by way of gift executed by private land owners in favour of the local panchayat, the local body cannot claim any title or right of pathway merely on the basis of entries in the revenue records classification of the subject land as boosthathi pathway and that the same would not confer any title or right whatsoever upon local body or the general public to use the same as public pathway.



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5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. On perusal of the counter filed by the second respondent and the submission made by the learned Government Advocate revealed that as directed by this Court, the first respondent conducted detailed enquiry and on receipt of the report from the District Revenue Officer as well as the third respondent, passed the detailed order and rejected the claim made by the petitioner on the ground that the said land comprised in survey No.11/3C ad measuring 0.95 sq. mt., has been enjoyed by the general public as mud road for more than 40 years. Even as per the petitioner, his grandmother also lost her right over the property and therefore, the petitioner is not entitled for compensation.

7. That apart, the said land classified as boosthathi pathway and it has been used by the general public for the past 40 years. It was in the shape of mud road. After acquiring land under the Adhidharvidar scheme, the road has been laid by thar for their use. In this regard, it is relevant to refer Order 26 Clause 15 of the Revenue Standing Order



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which reads as follows:-

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“15.Encroachments on plan-marked details:-- A plan-marked channel or pathway running in a patta land is a Government land. Eviction of encroachment in such lands need be invoked only in cases where the encroacher has interfered with the plan marked detail so as to close its entrance to and exit from his lands. In the case of pathways and cart tracks which have been used by the public till recently, the ryot should not be allowed to shift the course of the details to suit his own convenience. However, such diversions of plan marked channel from its original course, with a view to consolidate his holding or to facilitate irrigation of the portions which would be otherwise severed need not be treated as encroachment.”

A plain reading of the aforesaid provision shows that a plan marked pathway running in a patta land is a Government land and if any encroacher has interfered with the plan marked detail so as to close its entrance to and exit from his lands, an eviction can be ordered. In view of the Revenue Standing order, even then the subject matter of the land running in the patta land, it should be treated as government land.

8. Admittedly, the petitioner's land has been used by the general public for the past 40 years from the date of laying of that road.



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That apart, it is classified as boosthathi pathway. Therefore, the petitioner cannot prevent the general public from using the said road.

Admittedly, the road was laid and the same was used by the general public. The petitioner and his grandmother never objected the usage of the road by the general public. After laying thar road, the petitioner sought for compensation. It cannot be considered and the above judgments cited by the learned counsel appearing for the petitioner are not helpful to the case on hand. This Court finds no infirmity or illegality in the order passed by the first respondent and the writ petition is devoid of merits and liable to be dismissed.

9. Accordingly, the Writ Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no orders as to costs.

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Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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G.K.ILANTHIRAIYAN. J.

rts

To

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Thiruvannamalai District,
Thiruvannamalai.
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(Village Panchayat),
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