



W.P. No. 3613 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

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M. Elaiyapillai

... Petitioner

-VS-

1. The Principal Secretary to Government,
Department of Rural Development & Panchayath Raj
Secretariat, Chennai 09.
2. The Director,
Department of Rural Development & Panchayath Raj
Panagal Maligai, Saidapet, Chennai 600 015.
3. The District Collector,
Collectorate Office, Kallakurichi District.
4. The Assistant Director,
Department of Rural Development & Panchayath Raj
Kallakurichi, Kallakurichi District.
5. The Block Development Officer (V.P.)
Chinnasalem Union Office,
Kallakurichi District.
6. The President of
Nainarpalaiyam Village Panchayath,
Nainarpalaiyam Village,
Chinnasalem Taluk, Kallakurichi District.
7. T.Kasthuri
8. R.Senthilkumar



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9. N.Panjavarnam

10.A.Annakari

11.S.Krishnamoorthy

12.T.Rajendran

13.R.Periyasamy

14.M.Periyasamy

15.P.Kumarapillai

16.K.John Ponnaiah

17.P.Kumarapillai

18.P.Ganesan

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, forbearing the Respondents 1 to 6 from laying road in the land of acre 1.39 cents comprised in old S.F.No.178/1 and new S.F.No.178/1A, 1B1, 1B2 situated at Nainarpalaiyam Village, Chinnasalem Taluk, Kallakurichi District by considering the Petitioner's representations dated 09.10.2023 and 28.10.2023.

For Petitioner : Mr. D.Muthuselvam

For Respondents : Mr. V.Ravi, (for R1 to R4)
Special Government Pleader

Mr. G.Nanmaran (for R5 and R6)



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ORDER

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Heard Mr. D.Muthuselvam, Learned Counsel for the Petitioner, Mr. V.Ravi, Learned Special Government Pleader appearing for the First to Fourth Respondents and Mr. G.Nanmaran, Learned Counsel for the Fifth and Sixth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition has been filed to restrain the First to Sixth Respondents from laying road in the land measuring an extent of acre 1.39 cents comprised in old S.F. No. 178/1 and new S.F. No. 178/1A, 1B1, 1B2, Nainarpalaiyam Village, Chinnasalem Taluk, Kallakurichi District by considering the representations dated 09.10.2023 and 28.10.2023 made by the Petitioner in that regard.

3. This Court during the earlier hearing on 16.02.2024, had passed the following self-explanatory order:-

“2. Having regard to the contentions raised in the Writ Petition, the Third Respondent shall depute the jurisdictional Tahsildar along with the Surveyor to inspect the property of



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the Petitioner to ascertain whether the contentions of the Petitioner that his private property in Old S.F. No.178/1 and new S.F. No.178/1A, 1B1, 1B2 situated at Nainarpalaiyam Village, Chinnasalem Taluk, Kallakurichi District, is illegally used for laying road as claimed by him and submit a report before the next hearing.

3. *The First to Sixth Respondents shall file a report of the action taken on the representation dated 28.10.2023 made by the Petitioner before the next hearing. If they are not able to take any action, Counter-Affidavit shall be filed explaining the reasons for the same, before the next hearing.”*

4. In response, the Fifth Respondent has filed an action taken report on 04.03.2024 stating as follows:-

“ *The Petitioner (i.e. M.Elaiyapillai) has filed a petition on 28.10.2023 to stop the respondents from laying road in 3 ½ cents of 1.39 acres in the Survey No. 178/1 in Nainarpalayam Village.*



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It is kindly submitted that, the above mentioned 3 ½ cents in the Survey No. 178/1 is being owned by Commissioner of Chinnaselem Panchayat Union based on the Revenue Department Records.

Further at the time of laying of road in the above mentioned place, it has been thoroughly inspected by the Surveyor Concerned.

In order to take action on the Petitioner's petition dated on 28.11.2023, a detailed letter has been sent vide this office Lr. No. A3/3145/2023, dated: 31.10.2023 to the Tahsildar, Chinnasalem to provide the details of Present ownership of the land in the Survey No. 178/1 and also it has been requested to them whether the claim of the Petitioner is reasonable as per the Revenue Records.

Further, regarding the Petition, it has been inspected by the Chairman of Panchayat Union Office, Chinnasalem, Block Development Officer (B.Pt), Zonal Block Development Officer, Revenue Inspector & Village Administrative Officer concerned on 17.11.2023 in presence of Petitioner and People of Nainarpalayam Village.



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During the inspection, it is identified that a deed was made among 12 members to create a common pathway including the litigation property in 3 ½ cents of 1.39 acres in the Survey No. 178/1 through a registered Document No. 87/1990. Later, based on the above agreement the same 12 members jointly donated the above land for public purpose as a gift deed to the Commissioner of Chinnasalem Panchayat Union through a registered document no. 22/2009.

Based on the above records, it is informed that there is “No Prima facie Evidence” in Petitioner's 28.10.2023 dated representation to stop laying of road in the above mentioned Survey. Hence, the road has been constructed for the welfare of people under State Finance Commission Panchayat Union Grants 2019-20 at an Estimate of Rs. 43.00/- Lakhs in Nainarpalayam Village. Also it is informed to this Hon'ble Court that the road has not been laid in the Petitioner's Patta land.”

As it has been cautioned by the Hon'ble Supreme Court of India in the decision in **Roshina T. -vs- Abul Azeez K.T.** [(2019) 2 SCC 329], that disputed questions of fact relating to the property rights must not to be determined in



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proceedings following summary procedure under Article 226 of the Constitution of India and it would have to be answered one way or the other only in a properly framed suit impleading necessary parties before the civil court, Learned Counsel for the Petitioner seeks permission of this Court to withdraw the Writ Petition reserving the rights to resort to the said remedy, and he has made an endorsement to that effect in the Court record.

In fine, the Writ Petition is dismissed as withdrawn with the aforesaid clarification. No costs.

04.03.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 23.04.2024.

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To

1. The Principal Secretary to Government,
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Secretariat, Chennai 09.
2. The Director,
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Panagal Maligai, Saidapet, Chennai 600 015.
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4. The Assistant Director,
Department of Rural Development & Panchayath Raj
Kallakurichi, Kallakurichi District.
5. The Block Development Officer (V.P.)
Chinnsalem Union Office,
Kallakurichi District.
6. The President of
Nainarpalaiyam Village Panchayath,
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