



W.P.(MD) No.20894 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.10.2024

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.20894 of 2016

and

W.M.P(MD)No.14906 of 2016

1.Muruganandam (Died)

2.M.Vijayalakshmi

3.Deepa

... Petitioners

*(P2 & P3 are impleaded vide Court order, dated 05.09.2024 in
W.M.P(MD)No.18042 of 2024)*

Vs.

1.The District Collector,
Theni District.

2.The Divisional Engineer (Highways),
Construction and Maintenance,
Theni.

3.The Tahsildar,
Theni Taluk,
Theni District.



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- 4.The Special Tahsildar (Settlement),
Theni-Allinagaram,
Theni.
- 5.The Commissioner,
Theni-Allinagaram Municipality,
Theni.
- 6.The Town Planning Officer,
Theni Municipality,
Theni.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of the respondent, dated 12.09.2016 in Na.Ka.No.31/2016 and quash the same and consequently forbear the respondents from issuing patta to any third party in respect of the portion situated between the petitioner's land in Survey No.189 (Sub Division number T.S.No.1 / 15) situated at Allinagaram Village and the bye pass road.

For Petitioner	:	Mr.J.Anandkumar
For R1-R4 & R6	:	Mr.B.Saravanan Additional Government Pleader
For R5	:	Mr.G.Kaleeswaran



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ORDER

The present writ petition has been filed seeking a certiorarified mandamus to quash the order of the 1st respondent, dated 12.09.2016 in Na.Ka.No.31/2016 and consequently forbearing the respondents from issuing patta to any third party in respect of the portion situated between the petitioner's land in Survey No.189 (Sub Division number T.S.No.1 / 15) situated at Allinagaram Village and the bye pass road.

2. The contention of the petitioner is that 1st petitioner is the owner of the above referred property measuring an extent of 10 cents. Out of this, 5 cents was purchased in his name and the other 5 cents was purchased in the name of his wife D.Vijayalakshmi (2nd petitioner herein) under a registered sale deed, dated 10.07.2002. His property is situated in Theni Bye Pass road and when he had submitted the building plan, Town Planning Officer, namely the 6th respondent herein had kept the application pending on the ground that there is a patta land of another person in front of the petitioner's property and therefore, there was no access to his property. The petitioner would submit that thereafter, he



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made an enquiry and came to understand that there were 3 development plans for Theni Allinagaram Municipality. Out of 3 plans, 2nd and 3rd plans were set aside by orders of this Court in W.P(MD)No.15519 of 2012 as it was contravention of the prescribed rules. This Court while setting aside the map by its order, dated 30.04.2013, restored the original position. As against the above order, a writ appeal was filed.

3. The petitioner would submit that between his land and Bye Pass road, no other person owned any property. If the land between the bye pass road and the petitioner's land were to be considered as another's land, it would not only result in reduction of the extent of the petitioner's valuable property, but also the reduction of the width of the Bye Pass road. The petitioner would further submit that the vested interest persons were trying to issue patta in favour of the 3rd parties by showing Bye Pass road as land in the detailed development map. Therefore, the petitioner would submit that in the meanwhile, since he came to learn that the respondents were attempting to issue patta to third parties, he had filed W.P(MD)No.12217 of 2016 on the file of this Court and by an order,



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dated 13.07.2016, direction was issued to the 4th respondent therein to consider and pass orders on the representation. This representation has now been turned down by the 3rd respondent, who has directed the petitioner to approach the 4th respondent to ascertain the encroachment and to ascertain the application for building approval. The grievance of the petitioner is that the 4th respondent has totally failed to comprehend the application before him. The petitioner had not sought for approval of a building plan. The petitioner has approached the authorities to forbear them from issuing patta in respect of the land between the petitioner's property and the Bye Pass road in respect of which he came to learn attempts were being made to issue patta. Meanwhile, the appeals filed against W.P(MD)No.15119 of 2012 etc., were disposed of stating that the land between the main highway and the petitioner's property shall be maintained as a public road. The Hon'ble Division Bench has also observed that if the Government proposed to acquire further lands for re-aligning or expansion of the road or otherwise initiate acquisition proceedings, the same can be done only on payment of compensation to the land owners. In the light of the above, the grievance of the petitioner



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has been redressed as the land between the petitioner's property and the Bye Pass road cannot be taken.

4. The learned counsel for the petitioner would submit that the grievance of the petitioner has been vindicated by the orders of the Hon'ble Division Bench of this Court in W.A(MD)Nos.859 to 863 of 2013 wherein the Hon'ble Division Bench had held that the stretch of land abutting the State Highways belong to the private parties and the Government if they wish to convert this vacant side into a road, they can do so only from acquiring the lands from the private parties. In fact, the Hon'ble Division Bench had provided the following procedures for acquiring the lands:

“17.It is made clear that the Government is empowered to acquire the extent of the land, which is required for public purposes. However, without acquiring the land no further progresses are to be made. All changes, sub division, mutation of revenue records, grant of patta, cancellation of patta shall be undertaken by the revenue authorities under the relevant provisions of the statutes, after completion of the acquisition proceedings by the Government for the public purposes. The



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Government is expected to complete the acquisition proceedings as expeditiously as possible, since the property right of the individuals are in stake and they may not be in a position to deal with their property in the manner known to law.”

5. The learned counsel for the petitioner would submit that taking advantage of the phrase in the order referred above that the “lands vest with the private parties”, the Government has attempted to issue patta to the 3rd parties. The Special Tahsildar has totally misconstrued the directions. The grievance of the petitioner is only regarding the issue of patta to third parties and not the grant of building plan or development plan. There is a total non-application of mind on the part of the 4th respondent in passing the impugned order. Therefore, the said order is set aside and it is made clear that the revenue authorities shall not issue patta to 3rd parties in respect of the patta land of the petitioner immediately abutting the National Highway especially in the light of the order in W.A(MD)Nos.859 to 863 of 2013.



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6. Accordingly, this Writ Petition stands allowed. No costs.

Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes/No

Index : Yes/No

Internet : Yes

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P.T.ASHA, J.

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