

(2011) 07 MAD CK 0107

In the Madras High Court

Case No : Writ Petition (MD) No. 11493 of 2005

Kamalasanan, Visala Padmini Thankachy and Syamalambika
Thankachy

APPELLANT

Vs

The District Collector-cum-Chairman, The Special Grade
Panchayat, The President and Rajaretinam

RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Citation : (2011) 07 MAD CK 0107

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : K.N. Thampi, for the Appellant; D. Muruganandham, C. Selvaraj and
C. Godwin, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The Petitioner has prayed for the issuance of a Writ in the nature of Certiorari for quashing the impugned order

passed by the District Collector-cum-Chairman, District Rural Development Agency, Vide Se. Mu. No. 2646/2005/Aa4, dated Nil, 9.2004, but

initialled on 19.9.2005, ordering the improvement of Killiyoor-Vellaiyambalam Bakthavatchalam road said to be passing through the Petitioners

land consisting 40 cents in Old S. No. 2026(R.S. No. 262/14), 40 cents in Old. S. No. 2024 (R.S. No. 262/15) and 57 cents in Old S. No.

2023(R.S. No. 262/16) of Killiyoor Village, Vilavancode Taluk, Kanyakumari District.

2. In support of the prayer made, it is pleaded in the affidavit that the Petitioner is the owner who was in possession and enjoyment of the land

referred to above, having inherited it under a registered will, dated 9.1.1980,

executed by their parents, the deceased sankara Pillai, nephew of

Kumara Pillai and Janaki Pillai Thankachi, daughter of Nanka Easwari Pillai Thankachy.

3. Rajarethinam/Respondent No. 4, with a mala-fide intention attempted to cut open the road across the Petitioners property which forced the

Petitioners to file a suit in O.S. No. 190 of 1998 before the learned Additional District Munsif at Kuzhithurai, seeking a decree of permanent

injunction. The suit was decreed vide judgment and decree dated 07.11.1996 and the Defendants were restrained from trespassing and

constructing a road in the suit property. The judgment and decree has attained finality.

4. The allegations of mala-fide has been levelled against Respondent No. 4 who inspite of notice has not chosen to contest or controvert the

allegations. Therefore the allegations of mala-fides are deemed to have been admitted. It is prima facie proved that the action of opening and

construction of road is prima facie mala-fide. It is the case of the Petitioner that on being elected as President of the Local Panchayat, Respondent

No. 4 cannot open the road through the private property of the Petitioners. The Petitioners have also filed execution petition, to execute the decree

of permanent injunction which is said to be pending before the Executing Court.

5. In order to over reach the decree of civil court, Respondent No. 4 in his capacity as the Office-bearer of Panchayat Union with the assistance of

Respondent No. 1, got included the scheme for extension of Killiyoor-Vellaiyambalam Bakthavatchalam road, through the property of the

Petitioners. The request stands accepted by way of proceedings referred to above under Item No. 22, as one of the item as already referred to

above.

6. The Petitioner seeks quashing of Item No. 22 of the proceedings of the Respondent No. 4.

7. The ground for challenge of the impugned part of the proceeding, is that the Respondents have no jurisdiction to interfere in the property of the

Petitioners which stands duly recognised by the Civil Court. In view of the decree of Civil Court the road in dispute is under the ownership of the

Petitioners, It is not open to the Respondents to cut a road through private property without following the due procedure of law.

8. It is the contention of the learned Counsel for the Petitioners that in the absence of acquisition of land, the Respondents have no right to

construct a road or to make improvement thereon, as it is not open to the State or its officer to trespass a private property of a citizen, except by

following due process of law.

9. The Writ Petition is opposed by the respondents by contending that the road is already in existence and by way of impugned part of

proceedings, the Collector has only sanctioned improvement of the existing road. The Petitioners therefore do not have any locus-standi to

challenge the improvement of the road by invoking the Writ jurisdiction of this Court.

10. The learned Counsel for the State on the other hand, on instructions, has not disputed the fact, that the property of the Petitioners has not been

acquired under the provisions of law.

11. The stand taken by the learned Counsel for the State is that once a road is already in existence, the Petitioners cannot have any grievance in

improvement of the said road.

12. On consideration, I find force in the contentions raised by the learned Counsel for the Petitioners. In a suit for permanent injunction filed by the

Petitioners, it was established that the Petitioners are the owners of the suit property and are in possession and enjoyment of the land, which is

sought to be improved upon by the Panchayat. A decree for permanent injunction was passed in favour of Petitioner after hot contest. It was

therefore not open to the Panchayat Union to approach the Collector or any other authorities to interfere with the possession of the Petitioners

under the garb of improving the road nor it was open to the District Collector to grant such permission without first making sure that the Panchayat

Union was in possession of the road to make any improvement. It was the District Collector to see whether in view of the Civil Court decree, it

was open to the authorities to interfere with the possession of the Petitioners. The impugned part of the order therefore suffers from patent non-

application of mind, which cannot be sustained in law, as it amounts to colourable exercise of power, not vested in him.

13. In the facts and circumstances of the case, while allowing the Writ Petition and quashing the impugned order, it is made clear that it will be

open to the Respondents to cut out a road and make improvement thereon, after acquiring the land if so permissible, in accordance with law, that

too on payment of requisite compensation etc., to the owner of the land.

14. The observation referred to above has been made, as the Civil Court decree for permanent injunction cannot be interpreted to mean, that the

authorities or the Panchayat Union is debarred from interfering with the possession of the owner, even in accordance with law. The rights of the

Respondents to acquire the land for construction of road for the benefit of general public cannot be questioned, but due process of law is to be

followed before evicted the true owner, even if road is required for public purpose. No costs.