
(2015) 08 MAD CK 0123
In the Madras High Court
Case No : Writ Petition No. 15038 of 2015

P. Elanchezhiyan	Vs	APPELLANT
The District Collector, Ariyalur District and Others		RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2015) 08 MAD CK 0123

Hon'ble Judges : Sanjay Kishan Kaul, C.J;T.S. Sivagnanam, J

Bench : Division Bench

Advocate : M. Radhakrishnan, for the Appellant; V.R. Kamalanathan, AGP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J—This Writ Petition designed as a "Public Interest Litigation" has been filed to direct the first respondent, the District Collector, Ariyalur District, to issue appropriate directions to the respondents 2 and 3, who are the Block Development Officer of the concerned area and its contractor, to complete the construction of Kodukkur- Manakkudayan (via Marungoor) Old Road in terms of the work order issued to the third respondent.

2. The petitioner, who is an Agriculturist, submits that the said road was formed by the second respondent during 1997-98, under Marketing Committee Scheme and even prior to such formation, the road was used as a public road. The petitioner would further state that the said road caters to the need of the villagers who reside in the nearby 25 villages in and around Sendurai Taluk. The petitioner further states that the road has been encroached by the respondents 4 and 5, a cement manufacturing company. The petitioner states that the villagers submitted a representation to the second respondent to repair the damaged road and the work was entrusted to the third respondent, however, the work was stopped abruptly. The villagers are said to have been informed that the said road passes through the property of the respondents 4 and 5, therefore, nothing more

could be done to the said road. In the background of these facts, the petitioner seeks for a direction upon the official respondents to complete the repair of the said road by the contractor, the third respondent, who was entrusted with the said work.

3. The learned counsel for the petitioner after elaborately referring to the facts as stated above submitted that the failure on the part of the first respondent to issue appropriate directions to the respondents 2 and 3 to restore the said road is violative of Article 14 and 21 of the Constitution. The learned counsel referred to the information furnished by the second respondent under the Right to Information Act, (RTI Act) by letters dated 01.11.2013, and 13.06.2014, to demonstrate that the road is a public road and has been used by the public and was formed during 1997-98 under the Marketing Committee Scheme. Therefore, it is the submission of the learned counsel that the necessary direction should be issued to the first respondent to repair the road which was formed during 1997-98.

4. The second respondent filed a counter affidavit from which it was seen that the area in which the road was in existence was given to the fourth respondent by way of a mining lease by Government Order dated 02.07.2008, for a period of 30 years and one of the conditions in the said Government Order is that the company should obtain the consent of respective panchayats for the formation of pucca road to be diverted along the periphery of their patta lands without affecting the interest of the villagers. The private respondents submitted that the alternative diverted road was formed in the year 2013, and continues to be used till date and at this point of time, the earlier road was sought to be re-laid through the third respondent/contractor. On considering the stand taken by the respondents 2 and 4, it was not clear as to the circumstances under which the aforesaid is being done, as if, the original road is required to be repaired and in such case, there would be no necessity for having diverted the road and if the road has already been diverted under what circumstances, the original road is being repaired.

5. Since the counter affidavit filed by the second respondent did not disclose these details and there was no reference to any document, by our order dated 10.06.2015, we called upon the first respondent to look into the complete records and file a counter affidavit under his signature setting out all the circumstances under which the works are now sought to be assigned to third respondent/contractor. Pursuant thereto, counter affidavit was filed by the first respondent as well as the respondents 4 and 5 and copies of the same were handed over to the learned counsel for the petitioner. By our order dated 13.07.2015, the case was adjourned at the request of the learned counsel for the petitioner who sought time to file rejoinder. When the matter was taken up on 04.08.2015, the learned counsel for the petitioner submitted that there is no need to file any rejoinder. Hence, heard the learned counsels for the parties at length and perused the materials placed on record.

6. The case of the petitioner is that the road in question is a public road formed during 1997-98, under a scheme and the road has to be repaired and made available to the public. The petitioner's further case is that the public cannot be prevented from using the road at the behest of a private party, who has been directed to form a separate road, thereby preventing access to the road which was in-existence ever since 1997. To substantiate the plea that the road is a public road, the information furnished by the second respondent under the RTI Act, has been relied on.

7. From the counter affidavit filed by the first respondent, it is seen that the second respondent sent a proposal for improvement of the said road for a distance of 2.7 kms at an estimated cost of Rs. 45.97 lakhs and pursuant to an E-tender, the third respondent was awarded the contract by the proceedings of the first respondent dated 10.03.2015. The fifth respondent objected to the same by their representation dated 30.03.2015, stating that part of the stretch of the said road taken up for improvement is their patta land and mining lease was granted to them for mining limestone vide G.O(4D)6, dated 02.07.2008, subject to the condition the respondent company should form the pucca road (alternate road) to be diverted along the periphery of their patta lands without affecting the interest of the villagers. It is further stated by the first respondent that the fourth respondent has formed a black topped road on the eastern boundary of the leasehold area for the use of the villagers in terms of the conditions contained in the Government Order at a cost of Rs. 1.50crores and for that reason they requested to cancel the work order issued in favour of the third respondent/contractor. Based on such objection, a report was called for from the Revenue Divisional Officer, Udayarpalayam who submitted his report stating that except S.F. No. 47, all other lands are patta lands of the fourth respondent and S.F. No. 47 is classified as "Nilaviyal Padhai" in the "A" register and the fourth respondent has formed a road passing through S.F. Nos.52,53, 72, 73 and 79 in Thular village for the use of the public and for buses to ply. Taking note of the report of the Revenue Divisional Officer, dated 30.03.2015, the District Collector cancelled the work order issued in favour of the third respondent. It is the say of the first respondent that after verification of the Government Order and the Revenue records, the work order was cancelled as the stretch of the road (old road) vested with the fourth respondent company and they have formed alternate road for the use of the public. The allegation that the respondents 4 and 5 have encroached the public road is denied as false and erroneous.

8. The fourth and fifth respondents in their counter affidavit submitted that from the year 1999, they had purchased lands in the said villages measuring a total extent of 132.63.0 hectares from various pattadhars under sale deeds duly registered and patta No. 1149, has been granted in favour of the respondent company. It is further submitted that they applied for grant of mining lease on 03.10.2000, for an extent of 154.13.5 hectares comprising of 63.79.5 hectares of patta and poramboke lands in Manakkudayan village and 90.34.0 hectares of patta and poramboke lands in Thular village. The Government after considering

the recommendations of the District Collector granted a mining lease vide Government Order dated 02.07.2008, to mine limestone for a period of 20 years over an extent of 136.11.0 hectares of patta and poramboke lands in the said villages. It is submitted that in terms of the conditions imposed in the said Government Order, the respondent company obtained permission from the village Panchayat on 21.05.2010 and 17.05.2013, and intimated the same to the Highways and Agricultural Marketing Departments for forming the pucca road with standards and specifications of the Highways Department in compliance with the condition imposed in the Government Order granting mining lease. Accordingly, the respondent company has provided a pucca road on the eastern boundary of the leasehold area for the use of the public of the villages at a cost of about Rs. 1.5 crores. It is further submitted that the newly formed road has been continuously used by the villagers from 2013 and the old road was abandoned and without taking note of these developments, a work order was issued to the third respondent for renovating the abandoned road. On coming to know of the same, the respondent company submitted a detailed representation to the first respondent regarding the diversion of the old road as per the stipulation in the Government Order and after considering the same, the work order was cancelled. Therefore, it is submitted that the question of relaying the abandoned road does not arise and the prayer sought for in the writ Petition is not maintainable. The learned counsel for the respondents 4 and 5 submitted that the Government Order issued in favour of the respondent company imposing a condition to form a new road was never put to challenge, the contractor has not challenged the cancellation of his work order and therefore, the question of repairing an abandoned road does not arise.

9. While granting mining lease in favour of the respondent company vide Government Order dated 02.07.2008, the following condition was imposed :-

3(d)(i) There is a road passing through the patta lands in S.F. Nos. 47, 48, 43, 42, 75, 74, 79 and 78 of Tular village and in S.F. Nos.126 & 125 of Manakudayan village. The applicant company should obtain the consent of the respective Panchayats for the formation of pucca road to be diverted along with periphery of their patta lands without affecting the interest of the villagers.

10. From the above it is seen that the road which was passed through S.F. Nos.47, 48, 43, 42, 75, 79 and 78 of Thular village and in S.F. Nos.126 & 125 of Manakudaiyan village are patta lands of the respondent company. Since there was a road which has been used through the patta lands and as the area was covered in the mining area a condition was imposed on the respondent company that they should obtain the consent of the Panchayat for the formation of a pucca road to be diverted along the periphery of their patta lands without affecting the interest of the villagers. This condition has been complied with by the respondent company and a pucca road has been formed and put to use since 2013. This is not disputed by the petitioner.

11. As noticed above, the said diverted road was formed by the respondent

company after due permission from the village Panchayat and intimation to the Highways and Agricultural Marketing Department adhering to the standard and specifications of the Highways Department. The photographs and the map filed by the fourth respondent shows that the existence of the newly diverted road.

12. In the light of the above factual position, the prayer sought for by the petitioner to direct the first respondents to issue appropriate directions to the third respondent/contractor to repair the old road, is misconceived.

13. As rightly pointed out by the learned counsel for the respondent company, the Government Order issued in 2008 is not put to challenge. That apart the diverted road to a distance of 1240 mtrs has already been formed and put to use since 2013.

14. In the light of the above facts, we are of the clear view that the relief sought for cannot be granted. Accordingly, the Writ Petition fails and is dismissed. No costs.