

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P. No.30229 of 2014
and
M.P.Nos.1 of 2014 and 1 of 2015

1.M.Srinivasan
2.P.M.Saminathan
3.M.Shanmugam

.. Petitioners

Vs.

The Project Director,
National Highways Authority of India,
Project Implementation Unit,
No.212-3 / D-3-1, Srinagar Colony,
Narasothipatty, Salem.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records pertaining to the notice dated 28.10.2014 and letter dated 11.11.2014 in NHAI/PIU-SLM/NH-68/Encroachment/2014/985 of the respondent and quash the same and consequently issue direction directing the respondent to conduct hearing by following sub section 3 of Section 26 of the Control of National Highways (Land and Traffic) Act 2002.

For petitioners : Mr.R.Marudhachalamurthy

For respondent : Mr.Richardson
for M/s.P.Wilson & Associates

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

Assailing the notice dated 28th October, 2014 for removal of unauthorised occupation under sub-section (2) of Section 26 of the Control of National Highways (Land and Traffic) Act, 2002 and the communication dated 11th November, 2014, whereunder the petitioner was directed to remove the unauthorised occupation within the stipulated

period, the petitioners have come up with this writ petition.

2 The learned counsel appearing for the petitioners submits that the petitioners have been in possession of the small house situated on the land in question, i.e. in Salem-Attur Main Road in Ayothiyapattinam village, Valapadi Taluk, Salem District, for the last 40 years. One Mr.R.Jaganathan has filed a writ petition, being W.P.No.25380 of 2014, seeking direction against the District Collector, Salem / the first respondent therein, to consider his representation dated 9th August, 2014 to remove the encroachment in Salem to Attur Main Road at Ayothiapattinam village, Valapadi Talu, Salem District.

3 A division bench of this court, having considered the submissions, passed an order dated 18th September, 2014 as order :

"3.Learned Senior Counsel appearing for the second respondent submits that he will examine the matter, and in case, there are encroachments existing, action in accordance with law will be taken with notice to all concerned, within a maximum period of one month from today, if required, assistance sought will be rendered by the first respondent."

4 It appears that on the basis of the observation made by this court, the respondent issued a notice for removal of the unauthorised occupation on 28th October, 2014, giving 21 days time to the petitioners to remove such unauthorised occupation. The petitioners filed a detailed representation on 10th November, 2014, pointing out that a copy of the order dated 18th September, 2014 passed in W.P.No.25380 of 2014 was not enclosed with the notice and the same was not available with the petitioners, and as such a copy of the said order be supplied to them. The respondent, by the impugned communication dated 11th November, 2014 sent a copy of the order dated 18th September, 2014. However, the petitioners were directed to remove the unauthorised occupation within the specified period.

5 We have heard the submissions of learned counsel for the parties and perused the pleadings and documents appended thereto.

6 Indisputably, the order dated 18th September, 2014 of the High Court was signed by the Assistant Registrar on 24th September, 2014. Albeit the petitioners were arrayed as party respondents, however, the writ petition was disposed of without there being any representation on their behalf, ensuring an opportunity of hearing to the petitioners herein before removal of encroachment. Thus, the contention of the learned counsel for the petitioners that a copy of the same was not available with them, merits acceptance. The respondent had supplied the copy of the said order along with the

communication dated 11th November, 2014. Consequently, the petitioners are entitled to some more time to make their representation. The petitioners submit that the petitioners are entitled to personal hearing under the provisions of law.

7 The learned counsel appearing for the respondent fairly submits that the petitioners may be granted some time to make a fresh representation and also personal hearing.

8 Resultantly, with the consent of the parties, we fix 29th July 2015, as the date for personal hearing. On the said date, the petitioners shall appear before the respondent during office hours and place their case before him. The petitioners are also at liberty to make a representation / explanation on or before the said date for consideration. Thereafter, the respondent is at liberty to consider the case in accordance with law and take a consequential decision as required on its own merit.

9 With the aforestated observation and direction, the writ petition stands disposed of. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

vvk

To

The Project Director,
National Highways Authority of India,
Project Implementation Unit,
No.212-3 / D 3-1, Srinagar Colony,
Narasothipatty, Salem.

1 cc to M/s.P.Wilson & Associates , Advocate Sr.No.35781
1 cc to Mr. R.Marudhachalamurthy, Advocate Sr.No.35634

W.P. No.30229 of 2014

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pmk.15.7.2015