

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE K.K. SASIDHARAN

W.P. No.24345 of 2015

and

M.P. No.1 of 2015

Sevanthiyappan

... Petitioner

Vs.

1. The Divisional Engineer,
O/o Divisional Engineer,
Construction and Maintenance,
Namakkal,
Namakkal District.
2. The Assistant Divisional Engineer,
O/o Assistant Divisional Engineer,
Construction and Maintenance,
Rasipuram,
Namakkal District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records pertaining to the order made in Na.Ka.190/2015/ E.Ni.Vo dated 26.05.2015 passed by the 2nd respondent and quash the same and consequently forbearing the respondents from disturbing the petitioner's possession of the house property situated at Nagarpali Street, Vennanthur, Namakkal District without due process of law.

For petitioner : Mr. G. Pugazhenthir

For respondents : Mrs. A. Srijayanthi
Special Government Pleader

ORDER

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

Mrs. A. Srijayanthi, learned Special Government Pleader, accepts notice for the respondents. With the consent of the learned counsel for the parties, the writ petition is taken up for final disposal, at the admission stage itself.

2. Challenging the legality of the notice dated 26.05.2015, whereunder, the petitioner has been called upon to remove the alleged encroachment at the Vennanthur Village comprised in S.No.65-3 in Semmandapatta Road between Mallur and Vennanthur, within a period of seven days, the instant petition is filed.

3. Learned counsel appearing for the petitioner submits that the petitioner is in possession and enjoyment of the property for a long period and the said premises does not cause any obstruction to the moving traffic. The impugned notice for removal/eviction has been issued without affording an opportunity of hearing to the petitioner, as prescribed under the provisions of the Tamil Nadu Highways Act, 2001.

4. On the other hand, learned Special Government Pleader appearing for the respondents would submit that the impugned notice be treated as a show cause notice, affording an opportunity of hearing to the petitioner and after considering his representation/explanation, if any, appropriate orders will be passed.

5. In view of the foregoing, we are not inclined to express any opinion on the merits of the case. Under Section 28 (2)(ii) of the Act, the alleged encroachers are entitled to a show cause notice against the removal of immovable structure purported to be an encroachment on the Government land. Thus, we grant two weeks time to the petitioner to file his representation/explanation putting forth his case before the concerned authority. Thereafter, the authorities shall be competent to take a decision on merits and in accordance with law and also consequential action, if necessary.

6. This writ petition stands disposed of accordingly.
Consequently, M.P. No.1 of 2015 is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ra

To

1. The Divisional Engineer,
O/o Divisional Engineer,
Construction and Maintenance,
Namakkal,
Namakkal District.
2. The Assistant Divisional Engineer,
O/o Assistant Divisional Engineer,
Construction and Maintenance,
Rasipuram,
Namakkal District.

+1cc to Mr.G.Pugazhenthii, Advocate, S.R.No.41269
+1cc to the Government Pleader, S.R.No.41254

W.P. No.24345 of 2015

VSN(CO)
CA(24/08/2015)

सत्यमेव जयते

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