

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2016

CORAM:

THE HON'BLE MR. JUSTICE SATISH K.AGNIHOTRI

and

THE HON'BLE MR. JUSTICE V. BHARATHIDASAN

W.P. No.15186 of 2016 and W.M.P. No. 13232 of 2016

K. Suthanthirakodi

Petitioner

vs.

1 The District Collector
Salem District, Salem

2 The Commissioner
Mettur Municipality
Mettur Dam
Salem District

3 The Divisional Engineer
Highways Department
Omalur, Salem District

4 The Assistant Divisional Engineer
Highways Department
Mettur Dam
Salem District

5 The Inspector of Police
Karumalai Koodal Police Station
Mettur Dam RS 636 402

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus forbearing the respondents 3 and 4, their men, agents and subordinates from disturbing the petitioner's possession and enjoyment of measuring 660 sq. ft. bearing Door No.24/1A2 in T.S. No.5 in Ward No. "C", Block I of Mettur Municipality, without due process of law.

For petitioner Mr. D. Selvaraju
For RR 1,3,4 & 5 Mr. P.S. Sivashanmugasundaram,
 Spl.Govt. Pleader
For R2 Mrs. M.E. Raniselvam

ORDER

(delivered by SATISH K.AGNIHOTRI, J.)

Mr. P.S. Sivashanmugasundaram, learned Special Government Pleader, accepts notice for respondents 1,3,4 and 5. Mrs. M.E. Raniselvam, learned counsel, accepts notice for the second respondent. With consent, the writ petition is taken up for final disposal, at the admission stage itself.

2 This writ petition is filed seeking a writ of mandamus forbearing the respondents 3 and 4 from disturbing the petitioner's possession and enjoyment of measuring 660 sq. ft. bearing Door No.24/1A2 in T.S. No.5 in Ward No. "C", Block I of Mettur Municipality, without due process of law.

3 According to the petitioner, her husband was in possession and enjoyment of the property in question in T.S. No.5 of Mettur Municipality, which is a natham poramboke land, running a medical shop. After his demise, she is running a photo copier shop there. While so, the fourth respondent has caused a public notice dated 04 January 2016 under Section 28 of the Tamil Nadu Highways Act, 2001 (for brevity "the Act") to the persons in occupation of the land belonging to the Highways in T.S. Nos.3 & 7, Mettur Municipality, seeking removal of encroachments allegedly made by them in the Highways land.

4 The petitioner's main grievance appears to be that she has not been served with any individual notice requiring her to remove the alleged encroachment and all that has been caused is only a public notice, which is in violation of principles of natural justice. Hence, the instant writ petition seeking the aforestated relief.

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

6 Admittedly, as per proviso to Section 28(2)(ii) of the Act, the authority concerned shall not pass any order without considering representation, if any, submitted by the encroacher. In the case on hand, it is manifest that the petitioner has not been served with any notice requiring her to remove the alleged encroachment.

7 In such view of the matter, to meet the ends of justice, we direct that the public notice dated 04 January 2016 be treated as show cause notice and the petitioner is at liberty to submit her reply to the same within a period of two weeks. Upon the petitioner filing her objection/reply, the authorities

are expected to advert to each and every objection raised by the petitioner, before passing the final order. Needless to state that no step can be taken till the final order is passed.

With the above direction and observation, the writ petition stands disposed of. Costs made easy. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cad

To

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Mettur Municipality
Mettur Dam
Salem District
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Highways Department
Omalar, Salem District
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- 5 The Inspector of Police
Karumalai Koodal Police Station
Mettur Dam RS 636 402

+lcc to Mr.D. Selvaraju, Advocate, S.R.No.25367
+lcc to the Government Pleader, S.R.No.25867

MG(CO)
EU(27/04/2016)

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