

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 8.11.2016

CORAM

The HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND

The HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.No.38959 of 2016

M.Devaraj

.. Petitioner

Vs.

1. The District Collector
Kanchipuram District
Kanchipuram.
2. The District Revenue Officer
Kanchipuram District
Kanchipuram.
3. The Revenue Divisional Officer
Chengalpet.
4. The Superintending Engineer
Highways Department
Chennai.
5. The Tahsildhar
Thirupporur Taluk
Thirupporur.
6. Sri Sivasubramania Nadar College of Engineering
Rajiv Gandhi Road (OMR Road)
Kalavakkam - 603 110
Thirupporur Taluk
Kanchipuram District.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of Certiorari to call for the records relating to the proceedings of the fifth respondent in Na.Ka.No.7457/2015/AA2, dated 3.11.2016* and quash the same.

For Petitioner

: Mr.K.M.Vijayan
Senior Counsel
for M/s.K.M.Vijayan
Associates

For Respondents

: Mr.R.Vijayakumar
Addl. Government Pleader
for respondents 1 to 5

Mr.Harishankar
for 6th respondent

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The petitioner seeks to assail the order dated 3.11.2016 passed under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, post issuance of notice under Section 7 of the said Act dated 7.12.2015.

2. It is an admitted position that the petitioner has some patta land, but the construction has not been made on the patta land and it is not for residential purposes, but a commercial activity of an eatery.

3. The encroachment is actually not denied, but is stated that it is a sequitur to the complaint made by the College/sixth respondent. It is also submitted by reference to the Revenue Standing Orders dealing with "Unauthorized occupation of government land" where the said Act applies that paragraph (10) deals with classes of encroachments which are required to be dealt with by local bodies. Such encroachments fall into two categories, i.e., those which can be ignored and those which cannot be ignored. The encroachments which cannot be ignored are in turn categorized as objectionable encroachments, unobjectionable encroachments and encroachments that are not objectionable at present, but which may become so at some future date. The encroachment in the present case has been opined by the authorities concerned as an objectionable encroachment and thus action is sought to be taken in respect of the same.

4. The learned counsel for the respondent authorities have pointed out that there are in fact ten encroachments by way of shops, compound wall and shed and notices have been issued in respect of all such encroachments, including that of the petitioner.

5. We are of the view that whether the college/sixth respondent has complained or not can only be one factor, but the

most important fact is that there is no legal right in the petitioner in respect of running of the eatery on the encroached land. That being the position, the action by the respondent authorities post issuance of notice to remove the same cannot be faulted.

6. The petition is dismissed. No costs. Consequently, W.M.P.No.33377 of 2016 is closed.

7. At request of learned Senior Counsel for the petitioner, it is clarified that if the petitioner is himself willing to remove the encroachments and files an affidavit with the respondent authorities within two days to do so within a maximum period of four weeks, then the action will be deferred to facilitate the petitioner to clear the area himself, failing which the authorities may proceed with necessary action.

Sd/-
Assistant Registrar(CS-II)
Dt. 14.11.2016

Corrected as per letter
dt.30.11.2016 by the Counsel
for the petitioner

Sd/-
Assistant Registrar(CCC)
dt. 02.12.2016

//True Copy//

Sub Assistant Registrar

sasi

To:

1. The District Collector
Kanchipuram District
Kanchipuram.
2. The District Revenue Officer
Kanchipuram District
Kanchipuram.
3. The Revenue Divisional Officer
Chengalpet.

To be substituted the
order already despatched

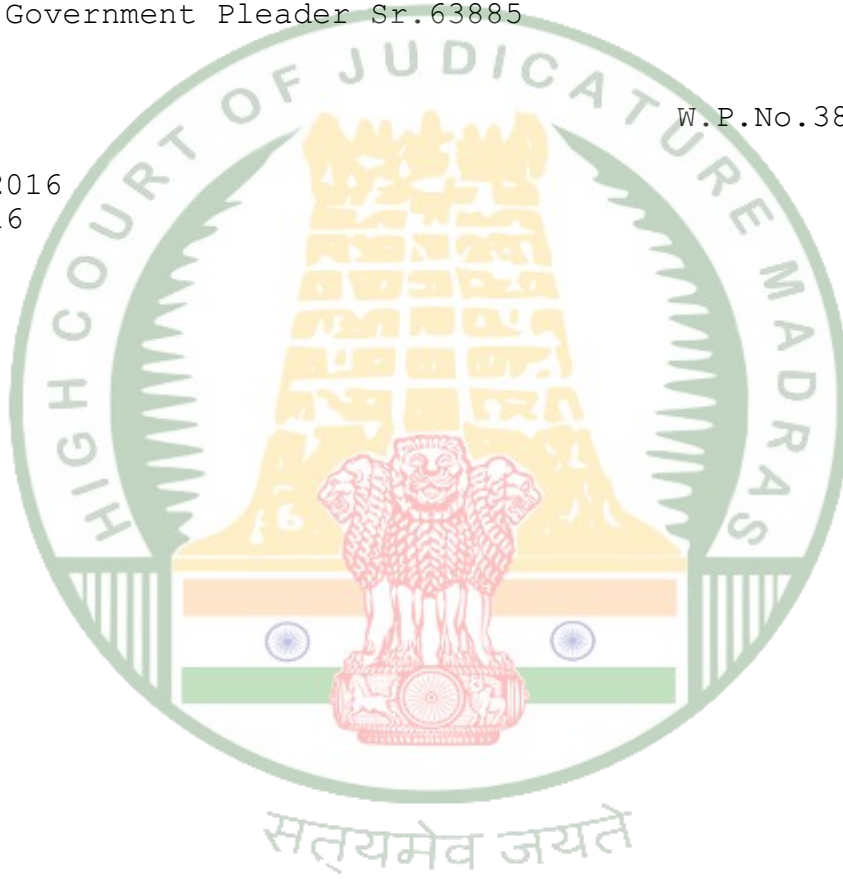
4. The Superintending Engineer
Highways Department
Chennai.

5. The Tahsildhar
Thirupporur Taluk
Thirupporur.

+ 1 cc to M/s. K.M. Vijayan, Advocate Sr.63795
+ 1 cc to Government Pleader Sr.63885

W.P.No.38959 of 2016

SAI (CO)
MD 16/11/2016
EU 05.12.16



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