

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 21.06.2016

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.7211 of 2016
and W.M.P.Nos.6404 and 6405 of 2016

E.Mani

..Petitioner

Versus

- 1.The Divisional Engineer,
Chennai City Roads Division,
Chennai - 600 015.
 - 2.The Divisional Engineer,
Highways Department,
Chennai Metropolitan Development Plan,
Chennai - 600 016.
 - 3.The Assistant Divisional Engineer,
Highways Department,
Construction and Maintenance Office,
Tambaram Sub Division,
Chennai - 600 042.
- ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of Certiorarified Mandamus, calling for the records of the 3rd respondent pertaining to his proceedings vide Notice No.149/2016-183/Medavakkam/E-Va-tho-a/dated 15.02.2016 and quash the same and consequently direct the respondents to make proper survey in respect of the land situated in Survey No.411 in Velachery Main Road, Medavakkam Village, Chennai - 600 100.

For Petitioner : Mr.Sankar Ramasamy

For Respondents: Mr.R.Govindasamy
Special Government Pleader

ORDER

By consent, the writ petition is taken up for final disposal.

2.The petitioner claims that he is the absolute owner of the property admeasuring an extent of 15.25 cents in Survey No.411/12, Old Survey No.411/3A3C, as per Patta No.1923, sub division Survey No.411/12A2 situated in Velachery Main Road, Medavakkam Village, Chennai - 600 100 and claims to have purchased the same from Nagendran Naicker and others by way of two registered sale deeds bearing Document No.2221/1989 dated 08.06.1989 and Document No.1927/1995 dated 25.05.1995 respectively registered on the file of the District Registrar, South Madras, Chennai and claims to be in possession and enjoyment of the same.

3.The grievance expressed by the petitioner is that all of a sudden, the third respondent has issued the impugned notice dated 15.02.2016 under Rule 28(2)(ii) of the Tamil Nadu Highways Act, 2001 calling upon the petitioner to remove the encroachment in the form of concrete building on the encroached portion of the land admeasuring an extent of 331.8 sq.mtr in Survey No.411 at Medavakkam Village, Chennai - 600 100 within seven days from the date of receipt of the notice, failing which, threatening to take appropriate action. Challenging the legality of the notice, the petitioner has filed this writ petition.

4.The learned counsel appearing for the petitioner submitted that in response to the impugned notice, the petitioner has submitted a detailed representation dated 18.02.2016, wherein he has stated among other things that since the land in question is his patta land purchased through registered sale deeds it is wrong to state that the petitioner has encroached upon some portion of the land belonging to the Highways Department and put up superstructure. Apprehending dispossession, the petitioner has come forward to file this writ petition.

5.This Court has entertained the writ petition on 26.02.2016 and ordered to maintain status quo as on the date of passing the interim order.

6.The third respondent has filed a counter affidavit stating among other things that the Old Survey No.411/3A3C was subsequently revised as S.No.411/12 by the Revenue Department and new sub division i.e. New S.No.411/12A1 and S.No.411/12A2 came into existence and the total extent of New S.No.411/12A2 is 14 cents and the said land area along belongs to the petitioner and not the new S.No.411/12A1. It is the further stand of the third respondent that since the impugned notice is in consonance with Rule 28(2)(ii) of the Tamil Nadu Highways Act, the petitioner cannot express any grievance and prays for dismissal of the writ petition.

7.The learned counsel appearing for the petitioner would submit that in response to the impugned notice, the petitioner has also submitted an explanation/reply dated 18.02.2016 and in all fairness, the third respondent ought to have considered, but before considering and disposing of the representation, coercive steps are taken to dispossess the petitioner and therefore, the petitioner is constrained to approach this Court, by filing this writ petition.

8.Mr.R.Govindasamy, learned Special Government Pleader who accepts notice for the respondents 1 to 3 would submit that before dispossessing the petitioner in the form of eviction, all opportunities provided under the Tamil Nadu Highways Act, 2001 will be scrupulously followed.

9.This Court has considered the rival submissions.

10.A perusal of the impugned notice would disclose that it is in consonance with Rule 28(2)(ii) of the Tamil Nadu Highways Act, for which, the petitioner has also submitted his representation/response dated 18.02.2016. In the light of the facts and circumstances, this Court directs the third respondent to consider and dispose of the petitioner's representation dated 18.02.2016 in accordance with law after providing an opportunity of personal hearing to the petitioner and pass orders within a period of eight weeks from the date of receipt of a copy of this order. Till then, the third respondent is directed to defer the decision to dispossess and evict the petitioner from the land in question.

11.The writ petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

cse

To

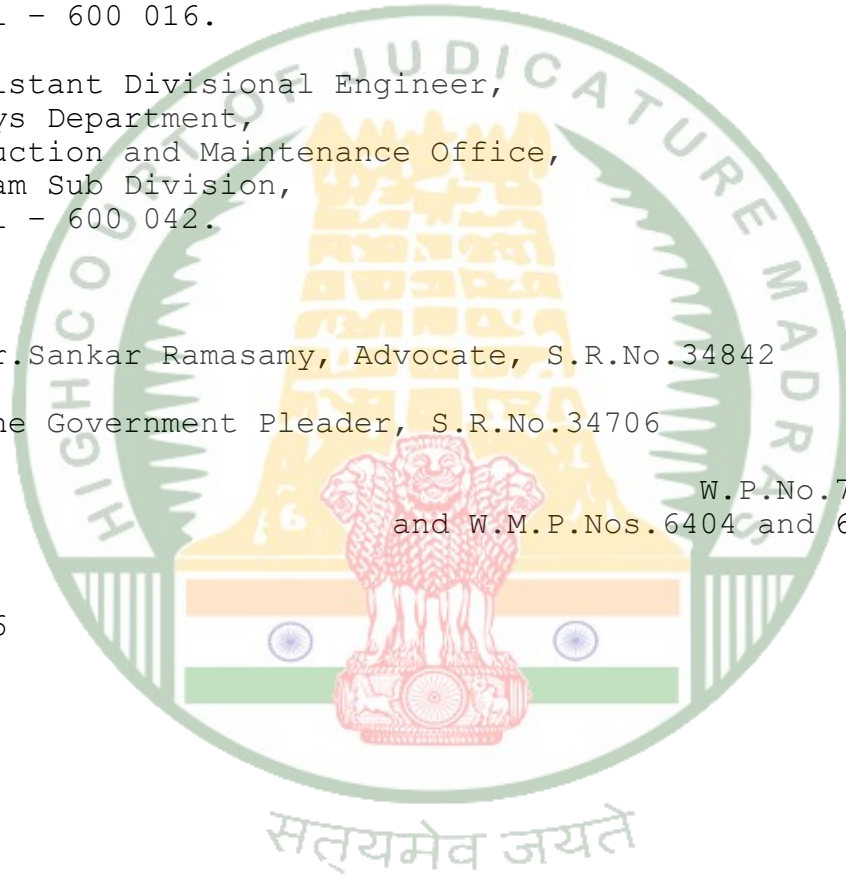
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+1cc to Mr.Sankar Ramasamy, Advocate, S.R.No.34842

+1cc to the Government Pleader, S.R.No.34706

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