

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON : 06.04.2016
DELIVERED ON : 01.09.2016

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THE HON'BLE MR.JUSTICE S.MANIKUMAR
and
THE HON'BLE MR.JUSTICE C.T.SELVAM

Writ Appeal (MD) Nos.28 and 401 of 2016**W.A. (MD) No.28 of 2016**

- 1.The Secretary,
Government of Tamil Nadu
Department of Highways,
Fort St.George,
Chennai.
- 2.The Tamil Nadu Highways Department,
through its Superintendent Engineer,
Madurai. ... Appellants/Respondents

-vs-

- 1.R.Mathiazhagan
S/o.Raman Manimollan ...1st Respondent/Writ Petitioner
- 2.Muthuraj
Divisional Engineer (Highways),
Alagarkovil Road,
Near Lotus Road,
Madurai.
- 3.S.Jawahar Muthuraj
Assistant Divisional Engineer (Highways),
Race Course Road,
Madurai - 2. ... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent Appeal against the order passed by this Court in W.P.(MD) No.7918 of 2011 on 12.02.2014.

W.A. (MD) No.401 of 2016

- R.Madhiyalagan
S/o.Raman Manimollan ... Appellant/Petitioner



-vs-

1.The Secretary,
Government of Tamil Nadu,
Department of Highways,
St.George Fort,
Chennai.

2.The Tamil Nadu Highways Department,
through its Superintendent Engineer,
Madurai.

3.Muthuraj
Divisional Engineer (Highways),
Alagarkoil Road,
Near Lotus Tank,
Madurai.

4.S.Jawahar Muthuraj
Assistant Divisional Engineer (Highways),
Race Course Road,
Madurai - 2.

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent Appeal against the order passed by this Court in W.P.(MD) No.7918 of 2011 on 12.02.2014.

Prayer in WP(MD). 7918/ 2011 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to remove the fence put up by the respondents in the property in an extent of 0.03.20 hectares comprised in Survey No. 202/5 Old S.No. 202/1 party Natham Patta No. 1170 of Thiruprankudram Village, Madurai south taluk, Madurai district and pass such further award exemplary cost against the respondents for abuse of power and misuse of process of law by the 4th respondent and restore the possession to the petitioner (Prayer amended vide Court order dated 06.02.2014 in MP(MD) No.1/2014 in WP(MD) No.7918 of 2011)

Appearance:

Appellants in W.A.(MD) No.28/2016 &
respondents 1 & 2 in W.A.(MD) No.401/2016 : Mr.B.Pugazhendi,
Special Government Pleader

First Respondent in W.A.(MD) No.28/2016 &
Appellant in W.A.(MD) No.401/2016 : Mr.V.Viswananthan

Respondents 2 & 3 in W.A.(MD) No.28/2016 &
respondents 3 & 4 in W.A.(MD) No.401/2016 : Mr.K.R.Lakshmanan

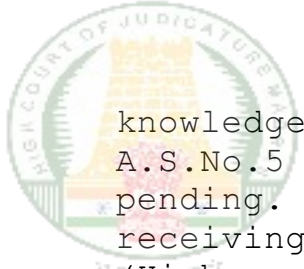
**COMMON JUDGMENT**

(Judgment of the Court was prepared by **C.T.SELVAM, J.**)

These writ appeals challenge the order of learned Single Judge passed in W.P.(MD) No.7918 of 2011 on 12.02.2014. While in W.A(MD) No.28 of 2016, the Tamil Nadu Highways Department (hereinafter referred to as respondents) challenges order of learned Single Judge directing restoration of possession of property after removing a fence thereon, the challenge in W.A. (MD) No.401 of 2016 is against learned Single Judge not having directed payment of compensation to the writ petitioner (hereinafter referred to as petitioner).

2. It is the case of petitioner that he is the owner of property measuring 0.03.20 hectares in Survey No.202/5, Old Survey No.202/1 (Part), Natham Patta No.1170, Thiruparankundram Village, Madurai South Taluk, Madurai District. After demolishing the old building thereon, he had constructed anew as per plan approved by the Executive Officer, Thiruparankundram Panchayat on 20.04.2005. Since Government of Tamil Nadu, represented by District Collector, Madurai District, as also one Chandran attempted to interfere with his possession, he filed O.S.Nos.463 of 1997 and 472 of 1997 on the file of learned District Munsif, Tirumangalam, seeking permanent injunction and the same were decreed. Challenging the same, defendants therein filed A.S.Nos.5 of 2007 and 9 of 2007 on the file of Sub Court, Madurai. A.S.No.5 of 2007 was dismissed for default and A.S.No.9 of 2007 is pending. Pending suit, the Revenue Divisional Officer, Madurai, had cancelled the patta granted to petitioner. Alleging that respondents in W.A.(MD) No.401 of 2016 were attempting to interfere with his possession, petitioner filed O.S.No.628 of 2010 on the file of learned District Munsif, Tirumangalam, seeking declaration and permanent injunction. He obtained an order of interim injunction, which was challenged by the Assistant Divisional Engineer, Madurai, in C.M.A.No.1 of 2011 on the file of learned II Additional Sub-ordinate Judge, Madurai Camp, Thirumangalam. When the same was posted on 09.02.2011 for enquiry, respondents in W.A.(MD) No.401 of 2016, illegally trespassed into the suit property, evicted petitioner and his family members and completely demolished his house. Hence, petitioner had moved W.P.(MD) No.7918 of 2011.

3. Before the Writ Court, the contentions of respondents were that the petitioner fraudulently obtained patta in the year 1996, which was cancelled subsequently by the Revenue Divisional Officer, Madurai. Petitioner is an encroacher of Government land. The filing of suits in O.S.Nos.463 and 472 of 1997 and the respective appeals in A.S.Nos.9 and 5 of 2007 were not brought to



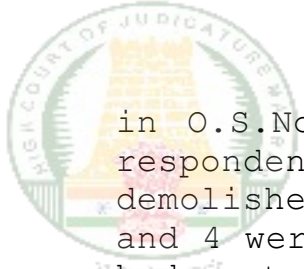
knowledge of Assistant Divisional Engineer (Highways). Though A.S.No.5 of 2007 was dismissed for default, A.S.No.9 of 2007 was pending. O.S.No.628 of 2010 was filed by petitioner only after receiving the order passed by Assistant Divisional Engineer (Highways) in adherence to orders of this Court passed in W.P.No.12345 of 2010. The Assistant Divisional Engineer (Highways) proceeded to evict the petitioner as per law after obtaining opinion of the Additional Government Pleader, Thirumangalam, to the effect that there was no stay with regard to S.No.202/1. One A.Rajendran challenged cancellation of pattas in W.P.Nos.18748, 18604 and 18481 of 1999 and the same were dismissed. Clearance of encroachment was done in accordance with the relevant rules and with the assistance of revenue and police officials. Respondents had sought dismissal of the writ petition.

4. Reasoning that respondents had no jurisdiction to initiate any action for eviction, learned Single Judge allowed the Writ Petition directing restoration of possession after removing a fence.

5. Learned counsel for respondents submitted that though petitioner informed of a right to property lying in Survey No.202/5, Thiruparankundram Village, Madurai South Taluk, Madurai District, there, no such property in existence. The property in dispute fell under Survey No.202/1. A patta bearing No.1170 was issued by the Special Thasildar, Madurai (North), under the UDR Scheme in the year 1996 and the same informed the Survey number as 202/5. Such patta as also others of similar nature had fraudulently been obtained and they subsequently were cancelled by the Revenue Divisional Officer, Madurai, under orders dated 02.08.1990. Property in Survey No.202/1 is Government 'pathai poramboke' and petitioner is an encroacher thereof. Petitioner duly was evicted as the property was required towards forming of service road along side the railway over bridge at Thiruparankundram. Despite knowledge of cancellation of patta, petitioner had constructed a house on the property in the year 2005. Respondents had caused notice to petitioner under Assistant Divisional Engineer Highways proceedings No.N.Ku.No.23/2010 / E.V.T.A/ Aakiramipu dated 23.09.2010 towards removal of encroachment. The same was challenged by petitioner in W.P.(MD) No.12345 of 2010 and under orders dated 30.09.2010, this Court permitted petitioner to reply to the show cause notice and directed respondents to pass orders on merits. This Court required respondents not to demolish the house of the petitioner pending a decision. Pursuant thereto, petitioner had made a written representation on 10.10.2010 as also further representations on 20.10.2010 and 22.10.2010. Pertinently, the representation dated 22.10.2010 acknowledged the position that



the patta issued to petitioner stood cancelled. Learned counsel submitted that appeals preferred by respondents in A.S.Nos.5 and 9 of 2007 against decrees of injunction in favour of petitioner in O.S.Nos.463 and 472 of 1997 was not to the knowledge of Assistant Divisional Engineer (Highways), Madurai. O.S.No.628 of 2010 on the file of learned District Munsif, Tirumangalam, was preferred by petitioner after orders were passed by respondents vide letter No.23/2011/E.V.A.Tho.A dated 15.11.2010 in adherence to directions of this Court in W.P.(MD) No.12345 of 2010. Learned counsel pointed out that while in the previous suits in O.S.Nos.463 and 472 of 1997, petitioner has informed the property concerned to be in Survey No.202/5, a bogus survey number, in O.S.No.628 of 2010, petitioner has informed the property to be in Survey No.202/5, Nathan Patta No.1170 measuring 0.03.20 hectares with an additional notation given as 'old Survey No.202/1 (part)'. Though interim injunction passed in I.A.No.1491 of 2010 in O.S.No.628 of 2010 was made absolute, respondents had obtained opinion of Additional Government Pleader, Thirumangalam, on 04.02.2011 and on his instructions that there was no stay in respect of Survey No.202/1 and eviction proceedings could be embarked upon with the help of police and revenue officials, an eviction notice informing the date of eviction was published in the village. Learned counsel further contended that individual notice also was served upon petitioner through the Road Inspector on 07.02.2011. When the eviction was resorted to on 09.02.2011, petitioner and others obstructed whereupon respondents preferred a complaint resulting in the arrest of petitioner. Learned counsel contended that pursuant to directions of this Court in W.P.(MD) No.12345 of 2010, representation of petitioner duly was considered, relevant records were looked into and an order on merits was passed against petitioner under proceedings of the Assistant Divisional Engineer, Madurai, in Na.Ka.EN:23/2010/E.va.Tho.A/Akkiramippu dated 27.10.2010 and the same was sent to the petitioner through registered post. Due notice of eviction was also served on the petitioner on 24.09.2010 and the same was acknowledged, eviction had been carried out in Survey No.202/1 in respect of which there was no order of stay. Pattas fraudulently obtained by petitioner and others had duly been cancelled. Challenging such cancellation, one Rajendran preferred W.P.Nos.18748, 18604 and 18481 of 1999 and the same were dismissed under common order dated 27.11.2008. The matter was taken up in appeal in W.A.No.3 of 2010 which again was dismissed on 12.07.2010. Learned counsel submitted that petitioner, an encroacher of Government land, stands duly evicted, there was no wrong doing on the part of Government and as such, writ petition ought to have been dismissed.



in O.S.No.628 of 2010 having been made absolute on 08.12.2010, respondents have, in utter disregard for the law and with malice, demolished the construction put up by petitioner. Respondents 3 and 4 were individuals/officials of the Highways Department. They had acted with particular malice against petitioner. Fourth respondent, in the absence of any prior notice and despite objections by petitioner, had demolished two houses and eight shops belonging to petitioner on the property in question. They had also damaged movables, household articles and other valuables. Petitioner and his family members were prevented from entering their own property even to collect the same. Despite knowledge that petitioner was an Assistant Professor in Mathematics, a false case has been foisted upon him resulting in his arrest. Till date, petitioner and family members are in tenanted premises and had suffered great adverse consequences owing to respondents action. Corporeal damage of Rs.1,35,00,000/- had been suffered by petitioner and learned single Judge has fallen into error in not directing payment of compensation.

7. We have considered rival submissions and perused materials on record.

8. We find unsubstantiated the claim of respondents that notice of intended eviction on 07.02.2011 has been served on petitioner. Learned Single Judge has found much wrong in the conduct of respondents and that petitioner has suffered much owing thereto. In support of such finding, we would refer to the order of learned District Munsif, Thirumangalam, passed in I.A.No.1491 of 2010 in O.S.No.628 of 2010 on 08.12.2010. In making absolute the interim injunction, the Court below has taken note of the position that the petitioner was granted patta bearing No.1170 to the property, had constructed a house and was in possession thereof. It has also considered the judgments in O.S.Nos.463 and 472 of 1997 wherein on behalf of the State, an Assistant, Madurai South Taluk, has been examined as DW-1. On appreciation of his evidence, it had been concluded that Survey No.202/1 had been sub-divided and patta stood issued to Survey No.202/5 to petitioner. Court below found that when in an earlier suit, a finding of there being a property in Survey No.202/5 had been rendered, the respondents could not reagitate the issue. The property in dispute has been found to be Grama Natham and respondents had not established that it was Natham Poramboke. In the circumstances, Court below has found the provisions of the Land Encroachment Act inapplicable. As rightly informed by learned Single Judge, though the present respondents were not parties in the earlier suits, the third respondent is a party respondent in O.S.No.628 of 2010 wherein an order of interim injunction has been made absolute and during the currency thereof, respondents could not resort to the provisions of the Land Encroachment Act. Such action can only be seen as an attempt to over reach the Court. In any event and as stated supra,



respondents are unable to substantiate the contention that due notice of intent to remove encroachment stands served upon petitioner.

9. For the said reasons, W.A.(MD) No.28 of 2016 shall stand dismissed. In so far as W.A.(MD) No.401 of 2016 is concerned, this Court would merely observe that the case is one which would merit award of compensation. However, the extent of corporeal/incorporeal damage suffered by petitioner are matters on which a decision would rest on facts. We have very little on fact before us and in any event are of the view that it would not be appropriate to determine such issues in writ proceedings. We would leave it to the petitioner to make out his case for compensation by way of civil suit, if he considers it appropriate to do so. If he so chooses, he would be entitled to the benefit of Section 14 of the Limitation Act.

In the result,

(i) W.A.(MD) No.28 of 2016 shall stand dismissed.

(ii) W.A.(MD) No.401 of 2016 shall stand disposed of with the above observation.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

gm

To

1. The Secretary, Government of Tamil Nadu,
Department of Highways, St. George Fort,
Chennai.

2. The Superintendent Engineer,
Tamil Nadu Highways Department,
Madurai.

+2CC to Mr.K.K.Samy, Advocate Sr.No.50093, 50094,
+2CC to Spl.Government Pleader Sr.No.50040, 40039

GJM/CK/26.9.16-7p-7c

**Pre-delivery Judgment
in**

**Writ Appeal (MD) Nos.28 and 401 of 2016
01.09.2016**