



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P. (MD) No.23550 of 2016
and W.M.P. (MD) No.16918 of 2016

Essakkiammal

... Petitioner

Vs.

- 1.The District Collector,
Office of the District Collector,
Tirunelveli.
 - 2.The Tahsildar,
Ambasamuthiram Taluk,
Tirunelveli District.
 - 3.The Assistant Divisional Engineer (Highways),
Ambasamuthiram,
Tirunelveli District.
- ... Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to impugned proceedings issued by the 3rd respondent in 100/2014/(A1) dated 23.11.2016 and to quash the same and consequently direct the respondents not to dispossess the petitioner from the shops bearing Nos.Door Nos.4/132, 4/133, 4/133-1 and 2 respectively comprised in Survey No.274/1 and 2 situated at Kuniyoor Village, Tirunelveli District.

For Petitioner :Mr.S.Sathya Chidhambram

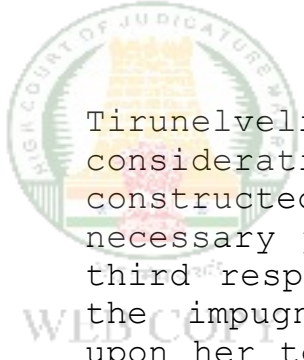
For Respondents :Mr.R.Velmurugan
Government Advocate

ORDER

(Judgment of this Court was delivered by M.SATHYANARAYANAN, J.)

By consent this writ petition is taken up for final disposal.

2.The grievance expressed by the petitioner is that she has purchased a property measuring an extent of 375 Square feet comprised in Survey No.274/1 & 2 situated at Kuniyoor Village,



Tirunelveli District from one Perumal on 10.10.1988 for valid consideration, vide registered document No.1584/2008 and she has constructed four shops in the said property after obtaining necessary permission from the authorities concerned. However, the third respondent has wrongly termed her as encroacher and issued the impugned notice No.100/2014/(A1) dated 23.11.2016, calling upon her to remove the encroachment within 7 days from the date of receipt of the notice, failing which further action will be taken. Therefore, she has come forward to file the present writ petition.

3. Heard the submissions of the learned counsel for the petitioner and Mr.R.Velmurugan, learned Government Advocate, who accepts notice on behalf of the respondents.

4. This Court has put a specific question to the learned counsel for the petitioner, by drawing the attention to paragraph 2 of the affidavit filed in support of the petition, that whether the petitioner had obtained any approved plan for the construction of the four shops, for which the learned counsel for the petitioner is unable to give any plausible explanation. The typed set of document does not contain approved sanction plan also. The affidavit filed in support of the petition as well as the typed set of papers also would prima-facie disclose that no approved plan has been obtained by the petitioner.

5. Be that as it may, Section 28 of the Tamil Nadu Highway Act, 2001, deals with prevention of encroachment and it is relevant to extract this:

"28. Prevention of encroachment. - (1) The Highways Authority or any person authorised by it in this behalf shall, at such time as may be considered necessary, conduct such checks and periodical inspection of the highway boundaries, with the view to ensure the prevention of unauthorized encroachment and the removal of such encroachment.

(2) The Highways Authority or any person authorised by it in this behalf, may -

(i) remove, without any notice, any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching the highway or in any area where the construction or development of a highway is undertaken or proposed to be undertaken;

(ii) remove any immovable structure, whether permanent or temporary in nature, encroaching the highway or in the area vested with Government under this Act, after issuing a show cause notice against such removal, within a period of seven days from the date of receipt thereof:

Provided that any representation received within



the time limit shall be considered by the authority or officer concerned before passing final orders."

6. Though it is open to the petitioner to give response to the impugned notice in the form of representation, admittedly, it has not been done. This Court taking into consideration of the fact that the petitioner claims to be owner of the shops in question right from the year 10.10.2008, is inclined to give one more opportunity to the petitioner to give response to the impugned notice with a further direction to the third respondent to consider the same expeditiously.

7. Accordingly, this Writ Petition is disposed of with liberty to the petitioner to submit her response/representation to the impugned notice dated 23.11.2016 issued by the 3rd respondent within a period of one week from the date of receipt of a copy of this order and the third respondent is directed to consider the same on merits and in accordance with law and pass order within two weeks thereafter and communicate the decision taken to the petitioner. Till such time, the third respondent is directed to defer from taking further action in terms of the impugned notice dated 23.11.2016. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar

sj

To

1. The District Collector, Office of the District Collector,
Tirunelveli.

2. The Tahsildar, Ambasamuthiram Taluk,
Tirunelveli District.

3. The Assistant Divisional Engineer (Highways),
Ambasamuthiram,
Tirunelveli District.

+1CC to Spl. Government Pleader Sr.No.79454

GJM/KM/10/1/17-3p-5C

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