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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HON'BLE MR.JUSTICE S.S.SUNDAR

W.P. (MD)No.15959 of 2013

and MP (MD)No.1 of 2013

Nachiarammal

... Petitioner

Vs.

1.The District Collector,
Tuticorin District,
Tuticorin.

2.The Assistant Divisional Engineer,
Highways Department,
Srivaikundam,
Tuticorin District

3.The Tahsildar,
Srivaikundam,
Tuticorin District

4.The Inspector of Police,
Seithunganallur Police Station,
Tuticorin District

... Respondents

PRAYER: The Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to pay a sum of Rs.55 Lakhs as compensation with interest for having demolished the petitioner's Shops seven in number total extent of 1386 Sq.ft in S.F.No.696/1B1, Serakulam Village, Ramanujamputhur Post, Srivaikundam Taluk, Tuticorin District.

For Petitioner : Mr.K.Vijayan, Senior Counsel
for Mr.N.Shanmugaselvam

For Respondents : Mr.B.Pugalendhi
Special Govt.Pleader

ORDER

(Order of this Court was made by S.S.SUNDAR, J.)

The Writ Petition in W.P(MD)No.15959 of 2013 is filed by the petitioner one Nachiarammal, for issuing a Writ of Mandamus, directing the respondents to pay a sum of Rs.55 Lakhs, as compensation, with interest for having demolished her Shops, seven in number, constructed in an extent of 1386 Sq.ft in S.F.No.696/1B1, Serakulam Village, Ramanujamputhur Post, Srivaikundam Taluk, Tuticorin District.

2. The petitioner has filed M.P.(MD)No.1 of 2013 to pass an order of direction, directing the respondents to pay interim compensation for having demolished the petitioner's Shops, seven in number, constructed in an extent of 1386 Sq.ft in S.F.No.696/1B1.



3. Though the first respondent is the District Collector and the 3rd respondent is the Tahsildar and the dispute relates to identity of the property, as to the fact whether this property lies in S.F.No.696/1B1 in Serakulam Village or not, have not filed counter in this writ petition. The 2nd respondent / the Assistant Divisional Engineer, Highways Department, Srivaikundam, Tuticorin District, has filed a counter.

4. Having regard to the nature of dispute, it is necessary to summarise the sequences of event in chronological order, so as to appreciate the rival contentions of the petitioner and the 2nd respondent.

5. The petitioner in the Writ Petition has purchased an extent of 14 cents in Survey No.696/1, under a registered Sale Deed, dated 31.03.1981. The respondents admit the title of the writ petitioner in respect of the property purchased by her and this 'A' register produced by the respondents would show that the writ petitioner is entitled to an extent of 0.75.5 Hectares in S.F.No.696/1A part, an extent of 0.03.0 Hectares in S.F.No.696/1A2 and an extent of 0.06.5 Hectares in S.F.No.696/1B1. It appears that one K.Narayanan of Ramanujam Pudur, has given several representations to the Revenue and Highways Departments, for removal of encroachment in Survey Nos.1998, 2006, 1956 in Shenbagaveperi Odai, In an application filed by said Narayanan, under the Right to Information Act, the authorities have confirmed the fact that there are encroachments in Survey Nos.1998, 2006, 1956.

6. In a subsequent application under Right to Information Act, the said Narayanan was informed further that the land in Survey No.1958/2, has been shown as 'Natham even in the Revenue account and that there are encroachments by putting up shops, houses and tiled houses and that steps have been taken to remove the encroachments in S.F.No.1958/2. In response to another representation by the said Narayanan, the Tahsildar, Srivaikundam, has informed the said Narayanan that the land situated in Survey Nos.1998, 2006, 1956 have been encroached and that the details of the encroachments have been forwarded to the Assistant Engineer, State Highways. The said Narayanan, on the basis of the information furnished to him by the Revenue Department, has filed a Writ Petition in W.P(MD)No.970 of 2012 for issuing a Writ of Mandamus, directing respondents to remove encroachments, as per the Tamil Nadu Protection of Tanks and eviction of Encroachments Act, 2007, in Shenbagavaperi Odai in Survey Nos.1998, 2006, 1956, 1985 in Iluppaikulam, Serakulam Village, Srivaikundam Taluk, Tuticorin District, as per the communication of 3rd respondent, dated 16.11.2005 in Na.Ka.No.A1/12575/05 and further communications of 3rd respondent, dated 02.03.2006, 23.07.2006 and 06.02.2007.

7. The contention of the said Narayanan in the Writ Petition was that Survey Nos.1998, 2006, 1956 are part of Odai, which leads to Shenbagavaperi Tank. The contention of said Narayanan has some relevance in the present writ petition and para 3 and 4 of the affidavit filed in support of W.P(MD)No.970 of 2012 are extracted as



below:-

"3) It is submitted that myself being the agriculturist agriculturist have taken responsibility to remove the encroachment in the Odai flowing to tank namely Senbagaraperi Tank and the said tank is a (manavari) rain harvest tank and many persons have encroached the Odai flowing to the said tank by putting up constructions on the southern side of Odai and hence I have made all the representations to all the authorities for removing the encroachment. In view of the encroachments the water is stagnated and a Oadai is artificially created in Munanjipatti pathway and the main water source has been stopped in view of the encroachments in the tank and the tank is becoming dry and in the winter season even the cattles are not able to drink water and formers are being affected and hence I have ventilated the grievance to the authorities by my representation on various dates from the year particularly on 22.09.2005 and the same was reopened by the 3rd respondent herein by his communication dated on 01.11.2005 Na.Ka.No.A1/12575/2005 by stating that there was a spot inspection and survey conducted and on Inspection it was found out that there was an encroachment in the tank and after survey by Firka surveyor the encroachments will be removed through the Highways Department.

4. It is submitted that even then there were no steps taken. Again I have made representation to the 3rd respondent and the respondent by his communication dated on 02.03.2006 have stated that the encroachment in the Oadai in the control of Highways Department and the 3rd respondent has found out that there was an encroachment and he has already reminded the respondent No.2 and 4 for removing the encroachment. Even thereafter was no steps were taken but my representation was responded by the 3rd respondent by a similar kind of reply by stating that the encroachments will be removed after survey by Firka Surveyor. But there was no steps taken and hence I have given the representation to the respondents herein 18.01.2007 and the 3rd respondent herein have issued a reply dated 06.02.2007 stating that he has already reminded to remove the Respondents 2 and 4 to remove encroachment being the authorities under the Tamilnadu Protection of Tanks and Eviction of Encroachments Act 2007 but no action have been taken till date."

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8. As evident, it was the specific case of the said Narayanan that the land in Survey Nos.1998, 2006, 1956 are all part of



Shenbagaveperi Odai, (waterbody) in Eluppaikulam, Serakulam Village, and that he wants the authorities to remove the encroachment, as per the provision of the Tamil Nadu Protection of Tanks and eviction of Encroachments Act, 2007, in Shenbagaveperi Odai.

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9. When Writ Petition in W.P.(MD)No.970 of 2012 was taken up for final hearing, on behalf of the official respondents viz., the District Collector and others it was submitted before this Court that Form II notice had already been issued and that Form III notice would be issued shortly to the encroachers. Accordingly, that writ petition was disposed of recording the statement of the learned Additional Government Pleader.

10. It appears that under Section 28(2)(ii) of Tamilnadu Highways Act, 2001, a notice was issued calling upon the petitioner's husband to remove the encroachment in Survey No.2006. Though the petitioner received the notice on behalf of her husband, on 05.06.2012, she has not given any reply, as the alleged encroachment is not in the property of the petitioner, which lies in Survey No.696/1. Later she also confirmed the position that the construction put up by her could not be in Survey No.2006, by approaching the Public Information Officer, who has given the information that, as per the revenue records, particularly, 'A' register, there is no survey number as S.F.No.2006 in Serakulam Village, Srivaikundam Taluk. However, on 14.07.2012, it is alleged by the writ petitioner that the second respondent visited her land in Survey No.696/1B1, where she had constructed 7 shops. It is submitted by the petitioner that the 2nd respondent came to the spot along with other authorities of the Government and disconnected the power supply and demolished the whole building under the guise of removing encroachment into the land in S.F.No.2006. According to the writ petitioner, Survey No.2006 is not in existence as per revenue records, having regard to the information furnished by the Revenue Department viz., the Deputy Tahsildar, Srivaikundam vide his letter dated 09.05.2013. Further, it is argued by learned Senior Counsel for the writ petitioner that the construction in S.F.No.696/1B1 was put up by the petitioner in the year 2004 and that the notice issued in the name of her husband for removal of encroachment in another Survey No.2006 in Serakulam Village, was improper and misleading. Despite objection of the petitioner, on the basis of title deed and records, the second respondent demolished the building, by using heavy machines and with the assistance of police and other revenue officials. It is for the reasons stated above, the petitioner has also sent a representation on 25.07.2013, calling upon the respondents herein and other officials from the Government to give compensation for unauthorized demolition of seven shops and for causing disrepute to her social standing and for the mental agony she was put to by the sudden and illegal demolition of her valuable building consisting of seven shops, which she had constructed in S.F.No.696/1B1, in the year 2004. Since the respondents have not responded, to the representation, sent by her on 25.07.2013, the petitioner has approached this Court by filing the above writ petition, for the relief stated above.

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11. As stated earlier, respondents 1 and 3, the revenue officials have not filed any counter, even though the dispute relates to the



location of shops whether they were in Survey No.696/1 or Survey No.2006. The 2nd respondent has filed a counter interalia denying the averments in the affidavit filed in support of the writ petition. It is the case of second respondent that removal of encroachment was in compliance of the direction of this Court in W.P.(MD)No.970 of 2012. After referring to the prayer in the earlier Writ Petition in W.P.(MD) No.970 of 2012, the 2nd respondent states that he took effective steps to remove the encroachment made in road area by issuing Form II Notice and taking steps for Form III Notice to all encroachers, as per law. The 2nd respondent further states that the petitioner has not challenged the order, dated 21.02.2012 passed by this Court in W.P.(MD)No.970 of 2012. The 2nd respondent relying upon the letter dated 14.02.2012, issued by the Tahsildar, Srivaikundam, pleaded that removal of encroachment was directed by the Tahsildar, as the lands in S.F.Nos.1998, 2006 and 1956 are classified in the revenue records, as salai or road or street and hence, it is only the 2nd respondent, who is competent to initiate proceedings for the removal of encroachment. The 2nd respondent has further stated in the counter that the Highways Department Authorities conducted a spot inspection with the help of Revenue officials and demarcated the property, fixing the boundary line of Survey Nos.1956 and 2006. According to the 2nd respondent, Survey No.2006 had been encroached by one Nambikonar, to an extent of 97 Sq. meter equivalent to 1044.09 Sq.ft, by construction of shops in the place. Hence, the 2nd respondent issued notice to the petitioner's husband, under Section 28(2)(ii) of Tamil Nadu State Highways Act, 2001, by proceedings dated 04.06.2012. Since the petitioner who received the notice dated 04.06.2012 did not file any objection for the removal of encroachment, he has acted, as per the provision of Section Section 28 (2)(ii) of Tamil Nadu State Highways Act, 2001.

12. Though the 2nd respondent admitted the title of the petitioner to an extent of 6.50 ares in S.F.No.696/1B1, 3 ares in S.F.No.696/1A2 and 7.50 Ares in S.F.No.696/1A1, his case is that the property of the petitioner is situated adjacent to the western side of Survey No.2006, which is classified, as 'Natham Road' and that the petitioner has illegally encroached into a portion of Survey Number.2006 by putting up construction. Since the 2nd respondent has acted in accordance with law and on the authority and power delegated to him, vide proceedings dated 28.04.2012, by the Divisional Engineer, Highways, Thoothukudi, has issued a Notice under Section 28(2)(ii) of Tamil Nadu State Highways Act, 2001, the petitioner is not entitled to any relief in the Writ Petition.

13. During the course of hearing, Mr.B.Pugalendhi, learned Special Government Pleader was directed to produce the revenue records, pertaining to Survey No.2006 and Survey No.696/1B1.

14. The original records produced by the learned Special Government Pleader before us are;

(a) The 'A' register pertaining to the village Serakulam in two volumes, (b).the Filed Map Register two in numbers prepared during UDR pertaining to Survey Nos.601 to 700; and another book pertaining to Survey Nos.801 to 1957, (c) Adangal Register prepared under Natham settlement and (d) Filed Map Register of the Village Serakulam



pertaining to Survey No.144 etc., including Survey Nos.1954, 1955 and 2006 etc., and prepared in 1999.

15. From the 'A' Register Volume - 1 pertaining to Serakulam Village we are able to see that the same has been prepared pursuant to UDR Scheme on 25.03.1984 wherein petitioner's holding in respect of land in S.F.No.696/1 has been registered in her name. S.F.No.2006 in Serakulam Vilalge is not found in the 'A' Register. All the changes and subdivisions are entered in Volume II of 'A' Register. We are not able to see any change in respect of S.F.No.1954/2. The information furnished by Deputy Tahsildar, dated 09.05.2013 appears to be correct. However the FMB prepared after 1999 gives an indication that Survey No.1954 has undergone changes. In the year 2015 another sub division has taken place and a portion of S.No.1954/60 has been subdivided to form S.No.1954/60, as per the entry of V.A.O, dated 31.03.2015.

16. The old Survey Number 1954 has been subdivided into several new survey numbers and subdivisions. S.F.No.2006 measuring an extent of 23 Ares is also part of original Survey No.1954 as per the correlation found in the Adangal Register. The Filed Maps prepared during UDR pertaining to Survey No.1801 to Survey No.1957 is found in one book and the Field Maps pertaining to S.Nos.601 to 700 is found in another book. In the first book prepared during UDR Field Map pertaining to S.F.No.1954 is missing. The Field Map pertaining to S.F.No.1956 shows that S.F.No.1956 and Survey No.696 are adjacent. However, in the Filed Map pertaining to S.F.No.696, one of the adjacent survey field namely S.F.No.1956 is corrected as S.F.No.1954 and again as 2006 in pencil. This unauthorized corrections made in the FMB is evident, when we compare the Filed Maps with reference to various survey fields surrounding the two Survey Numbers 696 and 1954. In the FMB Register prepared recently (1999), the Filed Map for S.No.1956 is missing. However, the Field Map pertaining to S.No.2006 is prepared, as if it is adjoining Survey No.696. This is a glaring mistake when compared to the FMB prepared during UDR. Pursuant to survey during UDR, Field Maps are prepared taking into account the location of each survey filed and the measurements. There cannot be a change of location of survey fields in the Filed Maps without resurvey and renumbering of survey numbers. When no part of S.F.No.1954 is adjacent to S.F.No.696, as per the filed Map prepared during UDR, the sudden change in the Filed Map showing S.F.No.696 just adjacent to New S.F.2006 (part of S.F.1954) is mischievous. The missing of field maps from the register and corrections resulting change of boundaries fixed, as per Field Survey during UDR scheme is noticed by us cautiously. Going by the records, we conclude that the statement of 2nd respondent in his counter that the petitioner's properties in S.F.No.696/1 are situated adjacent in western side of Survey No.2006, is wrong and made on the basis of tampered records.

17. It is relevant to point out that the petitioner in W.P.(MD) No.970 of 2012 has specifically stated that Survey Nos.1956, 1998 and 2006 are part of waterbodies and that eviction should be carried out under the provision of the Tamil Nadu Protection of Tanks and eviction of Encroachments Act, 2007. However, the second respondent has proceeded to remove encroachment on the basis that the property in



Survey Nos.1956, 2006 and 1998 form part of road or street and that the lands are under the control of Highways Department. Since the petitioner is not a party in the earlier Writ Petition in W.P.(MD)No.970 of 2012, the 2nd respondent ought to have surveyed the land with the help of revenue authorities in the presence of the petitioner in the present writ petition to avoid injustice and heavy loss to the tune of several lakhs to a citizen of this Country.

18. The 2nd respondent has admitted that he has removed the encroachment by demolishing seven shops constructed by the petitioner, on 14.07.2012. Even before this Court, earlier, while filing the Writ Petition in W.P.(MD)No.970 of 2012, it was reported that Form II Notice had already been issued and that Form III notice would be issued shortly to the encroachers. Form II and Form III notices are not the notices issued under Highways Act, but under the provisions of the Tamil Nadu Protection of Tanks and eviction of Encroachments Act, 2007. Till the disposal of the earlier writ petition in February, 2012, the encroachment in Survey No.1998, 2006 and 1956 etc., were treated by the respondent as an encroachment into a waterbody viz., Shenbagaveperi Odai.

19. In these circumstances, the sudden change of stand by the respondents, give rise to a doubt as to the bonafides of respondents in demolishing shops. The writ petition has been filed for directing the respondents to pay a huge sum of Rs.55,00,000/-, as compensation, for the illegal demolition of the shops constructed by the petitioner. Though in the normal circumstances, we would have directed the writ petitioner to approach the civil Court to establish her rights before the civil Court, having regard to the conduct of respondents who have acted in a contumacious manner by fabricating records, we accept the case of petitioner that she has not encroached into S.F.No.2006 for the present. This Court is conscious of the decision of Full Bench of this Court in Ramaraju Vs. State of Tamil Nadu reported in **2005(2) CTC 741** where this Court directed the Revenue to approach the civil Court to evict a person who is in settled possession under a bonafide claim of title. When a person is in settled possession and there is a bonafide dispute as to the title, it is unfair and improper on the revenue authorities to exercise their powers by invoking the provisions of Land Encroachment Act or the provision of the Tamil Nadu Protection of Tanks and eviction of Encroachments Act, 2007, by resorting to summary procedures. The Full Bench of this Court has indicated that in such cases, even the localbody or the revenue has to approach the civil Court for removal of encroachments. In the present case, the building that was constructed by the petitioner spending huge cost has been pulled out to ground by following summary procedures, without giving sufficient opportunity to the petitioner. Even the eviction notice was issued in the name of a wrong person and showing a different survey number. When the construction was on, none of the respondents objected or issued notice to stop construction.

20. The information furnished to the petitioner under Right to Information Act and the original revenue records produced before this Court, clearly indicates that the revenue officials have made an attempt to tamper the records, for the purpose of justifying their hasty action in demolishing the building constructed by the petitioner. Since the



2nd respondent has demolished the building under the garb of removing encroachment into the land, which falls within S.No.2006 and which is under the control of Highways Department, we feel it is just and necessary to protect the interest of petitioner in respect of the property where she had put up the 7 shops irrespective of her stand that she is in possession. Though the petitioner is entitled to compensation for the illegal demolition of her shops and for depriving her of the legitimate income from the newly constructed shops, we find that it is not appropriate for this forum to determine the quantum of compensation awardable to the petitioner under different heads, since the matter requires evidence and adjudication of issues on the disputed question of facts relating to the award of damages / compensation.

21. For the reasons stated above, we direct the 2nd respondent to handover the site where the petitioner had put up 7 number of shops and direct the respondents to treat the petitioner's possession as lawful. However, the respondents are given liberty to approach the civil court to seek appropriate relief against the writ petitioner, including the relief for recovery of possession, if really the disputed site fall outside survey field S.F.No.696/1B in Serakulam Village, Sri Vaikundam Taluk and fall within S.F.No.2006 or any other survey field belong to the Government. Since determination of compensation under various heads involves disputed question of fact, the Writ Petitioner is also permitted to approach the civil Court for getting just compensation for the illegal demolition irrespective of her title over the disputed site where she had constructed the shops and which were demolished by the 2nd respondent. For this purpose, we hold that the demolition of shops constructed by petitioner is illegal.

22. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/
Assistant Registrar(CS-I)

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Sub Assistant Registrar

To

- 1.The District Collector,Tuticorin District,Tuticorin.
 - 2.The Assistant Divisional Engineer,
Highways Department,Srivaikundam,Tuticorin District.
 - 3.The Tahsildar,Srivaikundam,Tuticorin District.
 - 4.The Inspector of Police,
Seithunganallur Police Station,Tuticorin District.
- +1cc to M/S.N.Shanmuga Selvam, Advocate in SR.No.25536

W.P. (MD)No.15959 of 2013
and MP (MD)No.1 of 2013
29.04.2016

MPK

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