

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
And
THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.No.8662 of 2017
and WMP.No.9489 of 2017

Mrs.R.Sanathi

..Petitioner

vs.

1. The Special Tahsildar IRR(LA),
Office of IRR,
Project Division, Highways Department,
Near Ponds India,
Pallavaram, Chennai.
2. The Divisional Engineer (H),
Chennai City Roads,
No.394/4, Anna Salai,
Chennai-600 015.
3. The Assistant Divisional Engineer,
State Highways Department,
C&M, Tambaram Sub-Division,
Chennai-600 042.
4. The Divisional Engineer (H),
CMPD Division II,
Chennai-600 015.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the notice issued by the 3rd respondent dated 15.02.2016 in his proceedings in Notice No.149/2016-101/Medavakkam/e.va.tho.aa and quash the same and consequently directing the 1st respondent to award compensation to the petitioner.

For Petitioner : Mr.J.Venkitachalam
for M/s.K.Thirumalai

For Respondents: Mrs.M.E.Raniselvam,
Additional Government Pleader

O R D E R
(Order of the Court was made by M.SATHYANARAYANAN, J.)

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner, in the affidavit filed in support of this writ petition, would aver among other things that she is the owner of the property admeasuring 3818 sq.ft. comprised in S.No.394 of Medavakkam Village, Saidapet Taluk, Chengai MGR District, through registered Sale Deed, vide Doc.No.4308 of 1994 dated 15.12.1994. The petitioner also claims to be the owner of land admeasuring to an extent of 3040 sq.ft. in S.No.3894 part, purchased through registered Sale Deed, vide Doc.No.3936/1994 dated 16.11.1994 and she is in absolute possession and enjoyment of both the properties. Re-survey was done in respect of S.Nos.384/26 and 384/25 and the petitioner was issued with patta Nos.1332 and 388 respectively in respect of the said lands in question. The petitioner, to her shock and surprise, received a notice dated 15.02.2016 from the third respondent stating among other things that the petitioner has encroached the lands admeasuring 129.28 sq.meters and put up a compound wall. The petitioner, after receipt of the said notice, has submitted his explanation dated 05.05.2016, pointing out the facts relating to her ownership and prayed for compensation based on the present market value and the said reply was also acknowledged by the respondents. The petitioner, through her Lawyer, also sent a legal notice dated 05.10.2016 pointing out the factual aspects in detail and called upon them to compensate for the damaged building. The third respondent, in response to the legal notice dated 05.10.2016, vide letter dated 26.11.2016 called upon the petitioner to appear for personal enquiry along with all original relevant documents on 30.11.2016 and accordingly, the petitioner appeared for personal enquiry and however she has not been favoured with any kind of response and hence, she submitted one more representation dated 05.12.2016 reiterating her earlier stand. The petitioner, aggrieved by the impugned notice issued by the third respondent dated 15.02.2016, came forward to file this writ petition.

3. The learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that there are overwhelming evidence to show that the petitioner is the owner of the land and properties in question and she has also been issued with patta Nos.1332 and 388 respectively in respect of the said lands and though the said fact has been brought to the knowledge of the third respondent in the form of representation/explanation dated 05.05.2016 and also by way of legal notice dated 05.10.2016, she is yet to receive any kind of response and hence, prays for

appropriate orders.

4. Mrs.M.E.Raniselvam, learned Additional Government Pleader, who accepts notice on behalf of the respondents 1 to 3, would submit that in the light of proviso to Section 28(2) of the Tamil Nadu Highways Act, 2001, the representation submitted by the petitioner would be given disposal at the earliest within a stipulated time.

5. This Court has considered the rival submissions and also perused the entire materials placed before it.

6. It is relevant to extract Section 28 of the Tamil Nadu Highways Act, 2001:

"S.28.Prevention of Encroachment:

(1) The Highways authority or any person authorised by it in this behalf shall, at such times as may be considered necessary, conduct such checks and periodical inspection, of the highway boundaries, with the view to ensure the prevention of unauthorised 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, returnable 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."

7. The petitioner, in response to the impugned notice dated 15.02.2016 issued by the third respondent, has submitted a detailed response dated 05.05.2016 and it was received and acknowledged by the respondents 1 to 4 and her representation was also followed by a Lawyer's Notice dated 05.10.2016, for which the third respondent has sent a communication dated 26.11.2016 calling upon the petitioner to appear for personal enquiry along with relevant documents and thereafter, she has not been favoured with any kind of response.

8. Proviso to Section 28(2) of the Tamil Nadu Highways Act, 2001 provides that any representation received within the time limit shall be considered by the authority or officer concerned before passing final orders.

9. In the light of the above said statutory provision, the third respondent is directed to consider and dispose of the petitioner's representation dated 05.05.2016 as well as the legal notice dated 05.10.2016 and the further representation dated 05.12.2016 and pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner.

10. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

jvm

To

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 4. The Divisional Engineer (H),
CMPD Division II,
Chennai-600 015.
- +1 cc to Govt. Pleader sr 79909.
+1 cc to Mr.K. Thirumalai, Advocate sr 79142.

W.P.No.8662 of 2017

SP(15/11/2017)