

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.31349 of 2017
and WMP.Nos. 34446 & 34447 of 2017

K.G.Senthil Prabhu ... Petitioner
Vs

1.The Government of Tamil Nadu
Rep by its Secretary
Department of Land Administration and Revenue
Fort St.George, Chennai - 600 009.

2.The Collector
Office of the Collectorate, Salem.

3.The Divisional Engineer
Office of the Divisional Engineer,
Tamil Nadu Highways Department
Mettur.

4.The Assistant Divisional Engineer
Office of the Assistant Divisional Engineer,
Tamil Nadu Highways Department
Mettur.

5.The Tahsildar
Office of the Tahsildar
Mettur.

6.The Mettur Municipality
Rep. by its Executive Officer,
Office of the Municipality
Mettur.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the fourth respondent pursuant to the notice issued under Section 28 of the Tamil Nadu Highways Act, 2001 dated 13.11.2017 and the consequential order of the fourth respondent in Na.Ka.No.484/2017/ENEEUV/dated 20.11.2017 and quash the same.

For Petitioner : Mr.M.Raja Sekhar
For Respondent : Mrs.M.E.Raniselvam [R1 to R6]
Additional Government Pleader

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

By consent, the writ petition is taken up for final disposal. Mrs.M.E.Raniselvam, learned Additional Government Pleader accepts notice on behalf of the respondents 1 to 6.

2. The petitioner claims that one M.K.Subramaniam was in absolute possession and enjoyment of the property admeasuring to an extent of 432 sq.ft. situated in Taluk Survey No.7/1, Old Block No.39, New Block No.9, sub-divided into S.Nos.7/41 and 7/42, at present in Mettur Taluk, Salem District and he has also put up superstructure bearing Door No.12/33. According to the petitioner, the said land was assigned in favour of M.K.Subramaniam by the Mettur Municipality. The petitioner would further state that the respondents 2 and 5 tried to demolish the superstructure without adhering to the due process of law and therefore M.K.Subramaniam filed a suit in O.S.No.155 of 1997 on the file of the District Munsif, Mettur for permanent injunction restraining the respondents 2 and 5 herein, from evicting him from the suit property and from demolishing the thatched house bearing door No.5/12-I 33 near State Bank Colony, Mettur Taluk, Salem District and the suit was decreed as prayed for by the plaintiff/M.K.Subramaniam, vide judgment and decree of the trial Court dated 03.03.2005. Thereafter, an appeal has been preferred by the defendants/respondents 2 and 5 herein in A.S.No.46 of 2005 on the file of the Sub Court, Mettur, and the same was dismissed on 22.09.2005, and thereafter no further challenge has been made and it has become final.

3. The petitioner would further state that he had purchased a property admeasuring to an extent of 432 sq.ft. in Old Block No.39, T.S.No.7/1, and as per Re-survey in Ward B, Block No.9, T.S.No.7/1, in Mettur Taluk, Salem District through a registered sale deed dated 20.11.2006 from the original owner namely M.K.Subramaniam and thereafter, he claims to be in possession and enjoyment and the superstructure is also subjected to statutory levies. However, to his shock and surprise, the petitioner was issued with a notice dated 13.11.2017, under Section 28 of the Tamil Nadu National Highways Act 2001, calling upon the petitioner to remove the encroachment and in response to the said notice, he has submitted his response dated 17.11.2017 and apprehending its pendency, filed W.P.No.30002 of 2017 and pending disposal of the same, his representation was considered and rejected by the fourth respondent, vide impugned communication dated 20.11.2017 and in the light of the said development, the petitioner prayed for withdrawal of the above said writ petition with liberty to challenge the said proceedings and in the light of the said endorsement made, the writ petition was dismissed as withdrawn on 22.11.2017 and the liberty sought for by the petitioner was

also granted. The petitioner, challenging the legality of the order/proceedings dated 20.11.2017 passed by the fourth respondent, came forward to file this writ petition.

3. Mr.M.Raja Sekhar, learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of papers and would submit that admittedly, the predecessor in title, namely M.K.Subramaniam was assigned with the lands in Taluk Survey No.7/1, Old Block No.39, New Block No.9, which has been subdivided into S.No.7/41 and 7/42 in Mettur Taluk, Salem District, admeasuring to an extent of 432 sq.ft. and he has also put up superstructure and apprehending dispossession, he had filed O.S.No.150 of 1997 against the Collector of Salem District and the Tahsildar [respondents 2 and 5 herein] for permanent injunction and it was also decreed on 03.03.2005, and challenge was made by the defendants/respondent 2 and 5 herein in A.S.No.46 of 2005, which was dismissed by the learned Sub Judge, Mettur and that the findings of first Appellate Court became final. It is the primordial submission of the learned counsel for the petitioner that the fourth respondent under mistaken impression, has formed the opinion that as if the petitioner had encroached upon the land in question and that if proper survey and measurement is done, he will be able to sustain his case and till such time, prays for protection. He would further submit that in the said superstructure, apart from having residence, he is running a small bakery to eke out his livelihood.

4. Per contra, Mrs.M.E.Raniselvam, learned Additional Government Pleader appearing for the respondents 1 to 6 would submit that the fourth respondent had duly followed the procedures contemplated under the provisions of the Tamil Nadu National Highways Act 2001 and after having considered the representation of the petitioner in proper perspective, has rejected the said representation and in the absence of any infirmity in the order dated 20.11.2017 passed by the fourth respondent, the said impugned order cannot be interfered with and would further state that the land in question has been acquired by the Government for the purpose of road expansion and hence, prays for dismissal of the writ petition.

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

6. In the light of the plea made by the learned counsel for the petitioner in the event of survey and measurement to be done in Taluk Survey No.7/41, Old Block No.39, New Block No.9, which has been now sub-divided as S.Nos.7/41 and 7/42, Mettur Taluk, Salem District, this Court grants liberty to the petitioner to file an appropriate application before the fifth respondent in the prescribed format along with necessary fees for surveying and measuring the lands in S.Nos.7/41 and 7/42, Mettur Taluk, Salem District, within a period of two weeks

from the date of receipt of a copy of this order and upon receipt of the same, the fifth respondent shall entertain the application, if the papers are otherwise in order and shall carryout the exercise of survey and measurement in the said land within a further period of four weeks thereafter, after putting the petitioner as well as the fourth respondent on notice, and communicate the decision taken to the petitioner and till such time, the fourth respondent shall defer further proceedings under the provisions of Tamil Nadu National Highways Act. It is also made clear that the petitioner till the completion of the above said exercise by the fifth respondent, shall not create any third party rights in the land in question and also shall not alter the physical features of the said superstructure.

7. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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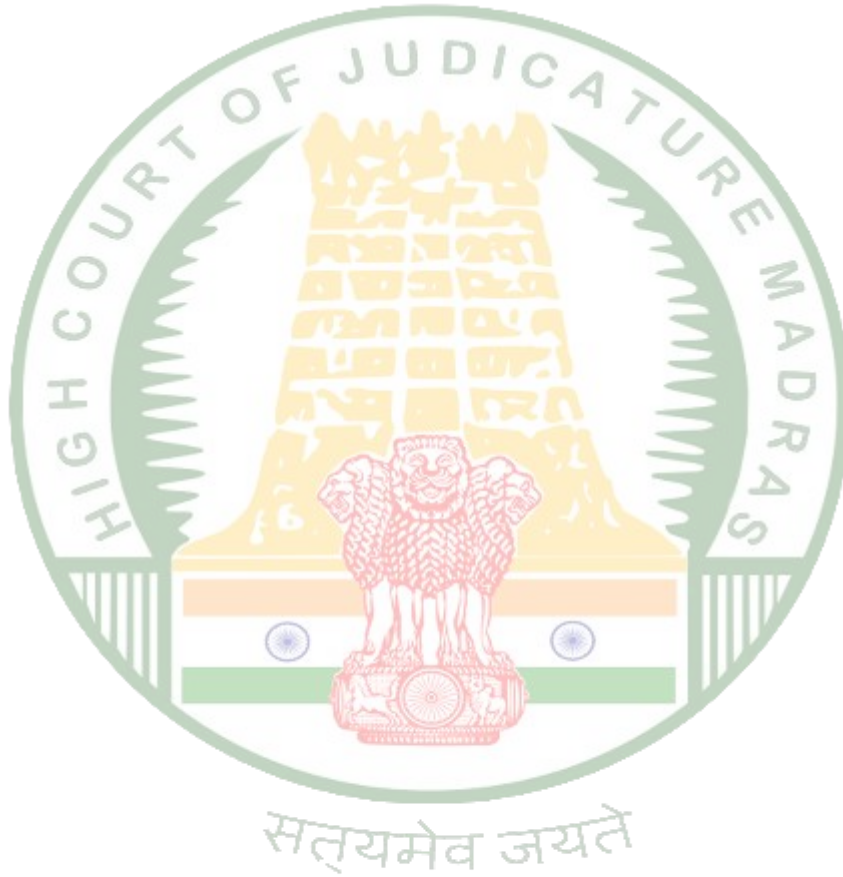
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+1cc to Mr.Rajasekar, Advocate SR.No.85627
+1cc to Government Pleader SR.No.85856

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MG (CO)
sm:7.12.2017



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