

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.07.2017

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.13083/2017 and WMP.Nos.13969 and 13970/2017

K.Annadurai

.. Petitioner

Versus

The Assistant Engineer,
National Highways,
Tindivanam Division,
Villupuram District.

.. Respondent

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorari to call for the records of the respondent's Impugned Notice No.NIL dated 03.05.2017 issued under Removal of Encroachments in Highways as per the Control of Land and Traffic Act 2002 and quash the said Impugned Notice.

For Petitioner :Mr.E.Parivallal

For Respondents :Mr.Venkataswamy Babu, SPC

ORDER

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

By consent, the writ petition is taken up for final disposal.

2 The petitioner claims that he is running a tea stall in Manalur Pettai Selection Grade Town Panchayat, Thiruvannamalai Main Road, Thirukovilur-605 754, for more than 25 years and paid statutory levies and also Electricity Consumption Charges and it is the sole source of his livelihood. The petitioner would further submit that one Mr.Ismail was residing near to his residence and attempted to trespass into his property and also lodged false complaint to the Highways authority, based on which, attempts were made to dispossess the petitioner from the property and challenging the same, he filed W.P.26350/2012, wherein the Executive Authority, Highways Department has filed counter affidavit stating that steps are taken to remove the encroachment as per the earlier order of this Court dated 07.01.2010 in W.P.No.14232/2009 and recording the said fact, the writ petition filed by the petitioner was dismissed. Thereafter, the respondent herein has issued the impugned notice alleging that the writ petitioner as an 'encroacher'. Therefore, they are to evict him by invoking

the provisions of Control of Land and Traffic Act, 2002 and Rules framed thereunder and challenging the legality of the same, he has filed this Writ Petition.

3 The Writ Petition was listed for hearing on 17.05.2017 and on that date, learned Standing Counsel appearing for the respondent accepted notice and this Court has passed an Order of Status Quo for a period of one week and direct to list the matter after one week and once again, it was listed on 24.05.2017 and it was adjourned to after vacation and therefore, interim order of Status Quo was not extended.

4 The Learned counsel appearing for the petitioner would submit that though in the impugned order, it is stated that the provisions of the said Act have been invoked, the fact remains that the petitioner have not been issued with any notice so far and though, the respondents are very well aware of the interim order of Status Quo, dated 17.05.2017, have dispossessed the petitioner on 18.05.2017 in utter violation and disregard of the order of Status Quo and therefore, prays for interference.

5 Per contra, Mr.Venkataswamy Babu, learned Standing Counsel appearing for the respondent has drawn the attention of this Court to the counter affidavit as well as to the typed set of documents and would submit that the learned Single Judge of this Court, has considered the grievances expressed by the petitioner herein in W.P.No.26350/2012 and taking note of the submission made on behalf of the National Highways that the respondent in pursuant to the Order dated 07.01.2010 in W.P.No.14232/2009 [Public Interest Litigation], steps are being taken to remove the encroachment after following due process of law, had dismissed the writ petition. The possession of lands belonging to the Highways Department, in the hands of the petitioner, are only being taken and would further add that the interim order of Status Quo is not clear as to whether or not, the possession on the part of the petitioner and as such, it is not open to the petitioner to contend that the interim order of Status Quo has been violated and prays for dismissal of this writ petition.

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

7 Though, it is contended by the petitioner that he is in possession of the Highways land for over 25 years and he has paid statutory levies, no documents whatsoever, have been filed in the typed set of documents and no specific averments as to the details of documents also available in the affidavit filed in support of this writ petition. The petitioner on an earlier occasion filed W.P.No.26350/2012, against the Highways Department as well as Revenue Officials, prays for issuance of Writ of Mandamus, directing them to take action against the 5th respondent and to protect his family members and his property situated in No.3/76, Thamaraikani Tea Stall, Manalur Pettai, Selection Grade Town Panchayat, Thiruvannamalai Main Road, Thirukovilur, and it was dismissed on 21.04.2014 and even then the respondents can dispossess the petitioner only by following due process of law and thereafter, the possession has been taken in utter violation of the interim order passed by this Court.

8 The fact remains that this Court, in Public Interest Litigation in W.P.No.14232/2009, has passed an order dated 07.01.2010 directing the concerned authorities to take proper steps to remove the encroachment. Accordingly, the respondent had exercised the power conferred under the provisions of the Control of Land and Traffic Act 2002, and the Rules

framed thereunder and taken action against the petitioner herein. A perusal of the counter affidavit also disclose that prior to the impugned order, the respondents had given notice dated 03.05.2017 and on 10.05.2017 respectively and despite that, the petitioner did not come forward to remove the encroachment.

9 It is also the primordial submission of the learned counsel appearing for the petitioner that during the subsistence of the interim order of Status Quo in this Writ Petition, on the very next day, the respondents have dispossessed.

10 A perusal of the docket order would disclose that while the order of Status Quo was granted, the status of the petitioner with regard to the alleged possession of the land in question, has not been specifically indicated.

11 The order of Status Quo is equal to an order of Ad-interim stay/injunction, passed under Order XXXIX [1] and [2] of C.P.C and therefore, the reasons have to be recorded for granting such an order and the Courts while granting interim order of Status Quo also expected to

record the nature of Status Quo and the same has not been indicated. Be that as it may, this Court is of the considered view that the possession of the petitioner has been dispossessed only by adopting due process of law and there is no merit in this writ petition.

12 In the result, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are also closed.

[M.S.N.,J]

[N.S.S., J]

14.07.2017

Index : No
Internet : Yes
sk

To
The Assistant Engineer,
National Highways,
Tindivanam Division,
Villupuram District.



सत्यमेव जयते

WEB COPY

M.SATHYANARAYANAN.,J,
and
N.SESHASAYEE.,J,

sk



WP.No.13083/2017

14.07.2017

WEB COPY