

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.09.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.23777/2017 & WMP.Nos.25002 & 25003/2017

Smt.Alli

Petitioner

Versus

1.The District Collector
Tiruvannamalai
Tiruvannamalai District.

2.The Tahsildar
Tiruvannamalai,
Tiruvannamalai District.

3.The Divisional Engineer
No.214, Dindivanam Road
Navakarai, Tiruvannamalai Town
Tiruvannamalai District.

4.The Assistant Division Engineer
Highways Department-Construction
and Maintenance-South Zone,
No.214, Dindivanam Road,
Navakarai, Tiruvannamalai Town
Tiruvannamalai District.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records pertaining to the issue of the impugned order bearing reference of Notice No.9/2017/U dated 20.06.2017 passed by the 4th respondent herein, quash the same as unconstitutional and against the law of natural justice and consequentially forbear the respondents from evicting the petitioner without following due process of law in respect of the petitioner's property located at Survey No.27/2 in Kilanaikkarai Village, Tiruvannamalai District.

For Petitioner : Mr.A.J.Rajaraman

For Respondents: Mr.A.N.Thambidurai, Spl.GP for
RR 1 to 3

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondents 1 to 3.

2 The petitioner, in the affidavit filed in support of this writ petition would aver among other things that she is a resident of Kilanaikarai Village, Tiruvannamalai Taluk and District and her forefathers along with very many others had settled in the said village from time immemorial and also put up thatched house and were also paying statutory levies. The respondents, on an earlier occasion, issued notices under section 28[2] of the Tamil Nadu Highways Act, 2001, with regard to the alleged encroachment on the part of the petitioner. The petitioner as well as the persons similarly placed, filed WP.Nos.417 to 428/2017 and the Hon'ble First Bench of this Court, vide common order dated 06.01.2017, has directed that the impugned notices issued under section 28[2] of the Tamil Nadu Highways Act, 2001, have to be treated as show cause notices, for which the petitioners therein have to respond and appropriate orders to be passed by the authorities concerned.

3 The learned counsel for the petitioner would submit that subsequent to the disposal of the said writ petitions, the 4th respondent had issued the impugned notice dated 20.06.2017, alleging that the petitioner had encroached upon the Highways land in S.No.27/2 at Kilanaikarai Village, and also put up a thatched house and therefore, she is liable to be evicted under section 7 of the Tamil Nadu Land Encroachment Act, 1905, as well as under sections 26[1] and 27.2[2] of the Tamil Nadu Highways Act, 2001 and therefore, the petitioner is constrained to approach this Court by filing the present writ petition.

4 It is the submission of the learned counsel for the petitioner that the 4th respondent, without understanding the scope and purport of the common order dated 06.01.2017, made in WP.Nos.417 to 428/2017, had issued the impugned notice and the petitioner and her forefathers had resided in the said area for very many years and the petitioner has also got documents to establish the said fact and without granting any sufficient

time, the petitioner is likely to be evicted and hence, left with no other option, the petitioner has filed the present writ petition.

5 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents 1 to 3 would submit that the remedy open to the petitioner is to respond to the impugned notice and without doing so and also in violation of the earlier common order dated 06.01.2017 made in WP.Nos.417 to 428/2017, the petitioner has straightaway approached this Court and hence, prays for dismissal of the writ petition.

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

7 It is relevant to extract section 28 of the Tamil Nadu Highways Act, 2001, which reads thus:-

"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 removable 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:"

As per the proviso to sub-section [2] of section 28 of the said Act, "any representation received within the time limit, shall be considered by the Authority or officer concerned before passing final orders."

8 In the light of the plea made by the petitioner, the impugned notice dated 20.06.2017, issued by the 4th respondent, shall be treated as show cause notice, for which the petitioner is at liberty to submit her response in the form of representation to the 4th respondent, by enclosing relevant, necessary and authenticated documents within a period of four weeks from the date of receipt of a copy of this order and the 4th respondent, upon receipt of the same, is directed to consider the said response/representation on merits and in accordance with law and pass appropriate orders within a further period of six weeks thereafter and communicate the decision taken, to the petitioner and till such time, shall defer further decision in terms of the impugned notice dated 20.06.2017. It is also made clear that till the 4th respondent undertakes the exercise of disposing of the response / representation under the provisions of section 28[2] of the Tamil Nadu Highways Act, 2001, the petitioner shall not create any third party rights in respect of the land or superstructure or both in question and also shall not commit any further encroachment.

9 The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

AP

To

1.The District Collector
Tiruvannamalai
Tiruvannamalai District.

2.The Tahsildar
Tiruvannamalai,
Tiruvannamalai District.

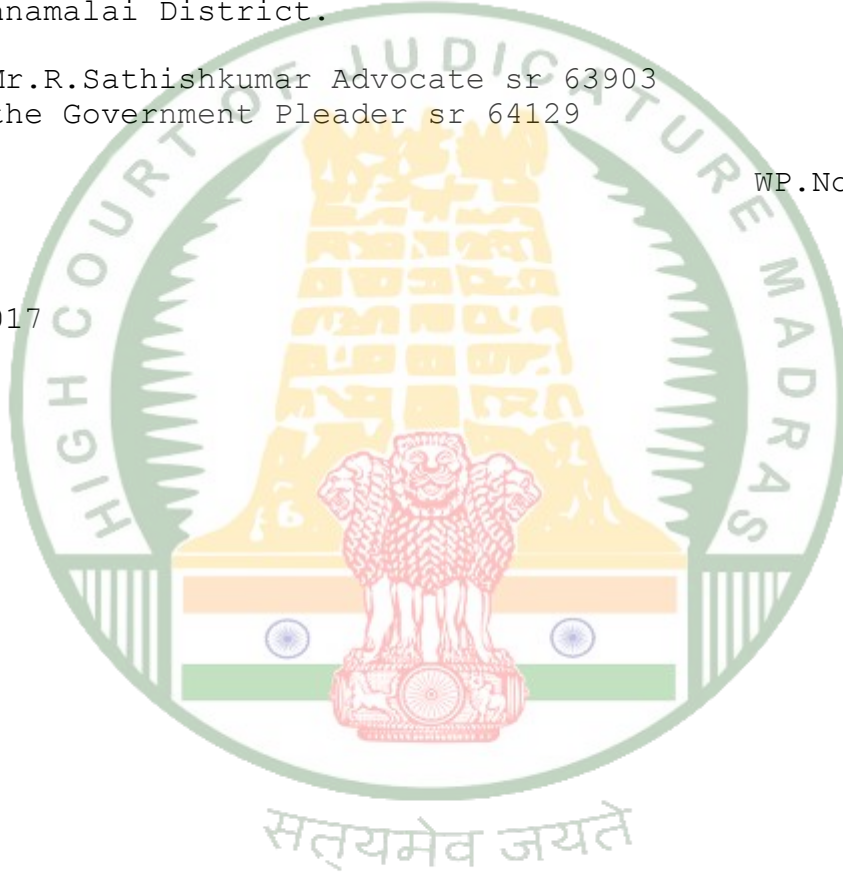
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+1 cc to Mr.R.Sathishkumar Advocate sr 63903
+1 cc to the Government Pleader sr 64129

WP.No.23777/2017

gjII(co)
aa06/10/2017



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