

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.P.No.24585/2017 and WMP.No.25945 & 25946 of 2017

P.Pandiarajan

.. Petitioner

Vs

1.The District Collector,
Cuddalore District,
Cuddalore.

2. The Special District Revenue Officer cum
Competent Authority,
National Highways No.227,
Land Acquisition, Cuddalore

3. Assistant Divisional Engineer,
National Highways Authority,
Chidambaram, Cuddalore District.

4. Tahsildar,
Kattumannarkoil Taluk,
Cuddalore District.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari filed mandamas to call for the records pertaining to the notice dated 25.07.2017 issued by the 3rd respondent and quash the same and consequently directing the respondents to initiate acquisition proceedings in respect of the land comprised in S.No.51/2 measuring about 2 1/2 cents of land and Sl.No.51/3 measuring 00065 Sq.meters (707.85 Sf.ft) with house situated at Kumaratchi Village, Kattumannarkoil Taluk, Cuddalore District owned by the petitioner in accordance with the provisions of the National Highways Act 1956 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.

For Petitioner : Mr.G.Pugazhenth

For R1 to R4 : Mr.A.N.Thambi Durai,
Special Government Pleader

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 respondents 1 to 4.

2 It is the case of the petitioner that his father Viz., Mr.Ponnusamy, was granted Assignment Patta in respect of house site Plot No.2 admeasuring to an extent of 0.01 cent in Re-Survey No.51/2, Kattumannarkoil Taluk, Cuddalore District and after his demise, the petitioner was assigned with the said property through Natham Patta bearing No.253 dated 03.06.1997 and the petitioner would further aver that through an unregistered Sale Deed, 0.05 cents of land belonging to one Mr.K.Swaminathan S/o.Kannusamy Rajaliyar, was also purchased by the petitioner's father and when steps were taken to lay a bridge on the river, oral instructions were given by the officials to the local residents to vacate the place on which the proposed bridge was sought to be constructed and the petitioner was informed that his lands are free from disturbance.

3 The grievance expressed by the petitioner is that all of a sudden, he was issued with impugned notice under Section 28(2) of Tamil Nadu Highways Act, 2001, by the 3rd respondent and challenging the legality of the same came forward to file this writ petition.

4 The learned counsel appearing for the petitioner would submit that apart from the land allotted to his father by way of assignment patta, he had purchased 0.05 cents of land through unregistered Sale Deed, which appears and considered to be an encroachment. It is the further submission of the learned counsel appearing for the petitioner that in response to the impugned notice, he has submitted his reply dated 10.08.2017 to the 2nd respondent and till his representation is being considered by the 2nd respondent, his possession may not be disturbed as he is living with his family on the superstructure put up on the said land.

5 It is relevant to extract Section 28 (2) of the Tamil Nadu Highways Act.

"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:"

Proviso to Sub Section [2] to section 28 of the Tamil Nadu Highways Act says that "any representation received within the time limit shall be considered by the authority or officer concerned before passing final orders" .

6 Though, the petitioner submitted his representation to the 2nd respondent dated 10.09.2017, in the light of the facts and circumstances of this case, this Court is of the view that without going into the merits of the claim projected by the petitioner, it is suffice to direct the said official to consider and dispose of the said representation on merits and in accordance with law within a stipulated time.

7 Accordingly, the 2nd respondent is directed to consider the representation dated 10.08.2017 submitted by the petitioner, on merits and in accordance with law and in the light of the proviso to Sub Section 2 of section 28 of the Tamil Nadu Highways Act, 2001 within a period of eight weeks from the date of receipt of copy of this order and communicate the decision taken to the petitioner and till such time, defer further decision in terms of the impugned notice. It is also made clear till the disposal of the representation by the 2nd respondent, the petitioner shall not create any third party rights in respect of the land in question and shall not alter the physical features and shall not commit any further encroachments.

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

Rka

Sd/-
Asst.Registrar

/true copy/

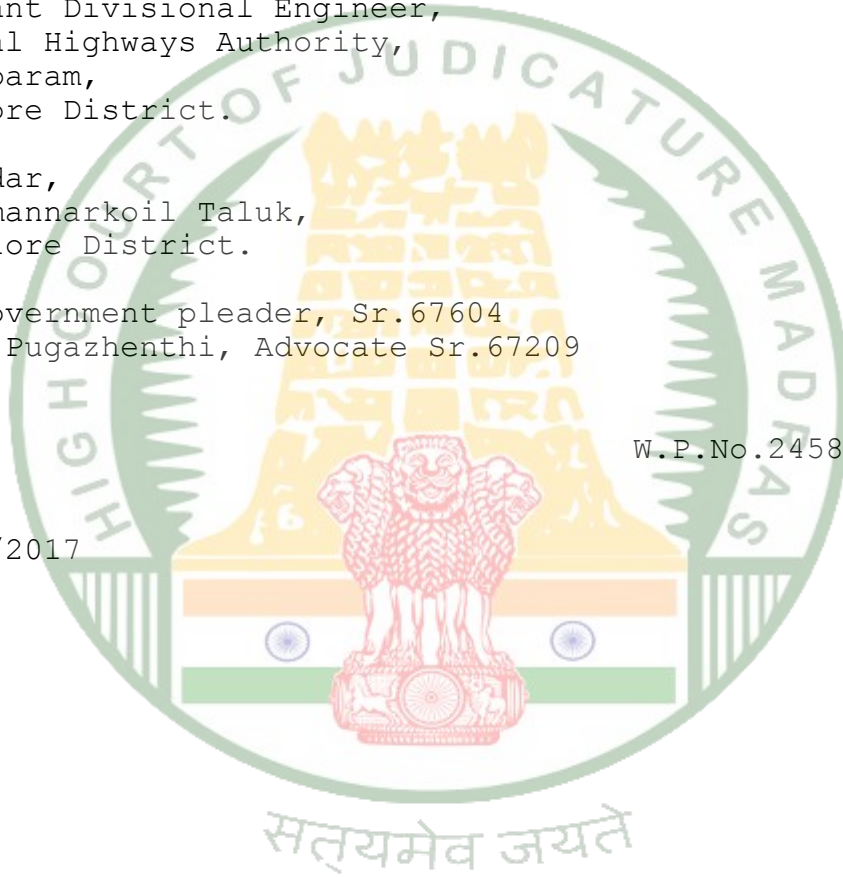
To

- 1.The District Collector,
Cuddalore District,
Cuddalore.
2. The Special District Revenue Officer cum
Competent Authority,
National Highways No.227,
Land Acquisition,
Cuddalore
3. Assistant Divisional Engineer,
National Highways Authority,
Chidambaram,
Cuddalore District.
4. Tahsildar,
Kattumannarkoil Taluk,
Cuddalore District.

+lcc to Government pleader, Sr.67604
+lcc Mr.G.Pugazhenthii, Advocate Sr.67209

W.P.No.24585 of 2017

VGII(CO)
RVR 14/11/2017



WEB COPY