

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2017

CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.24634 of 2017

and WMP.Nos.25991 & 25992 of 2017

Palanisamy
Tamil Nadu Vivasaigal Sangam
District President
CPI/AITUC
38, Annur Road (Noyyal), Samalapuram
Coimbatore - 641 663. .. Petitioner

Vs.

1.The Assistant Divisional Engineer
Highways Construction and Maintenance
Palladam - 641 664
Tiruppur District.

2.The Assistant Engineer
Highways Construction and Maintenance
Palladam - 641 664
Tiruppur District.

3.The Tahsildar
Palladam Taluk
Tiruppur District - 641 664.

4.Samalapuram Town Panchayat
Represented by its Executive Officer
Pallapalayam Post
Mangalam via
Tiruppur District - 641 663. .. Respondents

Prayer : Writ Petition filed under Section 226 of Constitution of India praying to issue a Writ of Certiorari, to call for records in proceedings Ku.No.25/2016/case/Vu.Po dated 2.11.2016 on the file of the second respondent and the consequential order in proceedings No.152/2016/ENIO/ dated 24.05.2017 on the file of the first respondent and quash the same as illegal, incompetent

and without jurisdiction.

For Petitioner : Mr.S.Sithirai Anandam
For Respondents : Mr.A.N.Thambidurai
Special Government Pleader

O R D E R

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

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

2. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondents 1 to 4.

3. The petitioner claims to be a District President of Tamil Nadu Vivasaigal Sangam, CPI/AITUC and he is in occupation of the property situate at S.No.698/1, Annur Road (Noyyal), Samalapuram, Coimbatore-641 663 and the said property was purchased on 10.04.1974 from one Royappan for a sum of Rs.1,600/- and from the date of purchase, the said property is utilised as a rest place for workers and also for conducting labour meetings. It is further stated by the petitioner that AITUC office is located 5 feet away from the State Highways and therefore, it is not causing any hindrance to free movement of traffic, as alleged by the respondents, and hence, it is not required for road expansion for the present. The petitioner would further state that the second respondent on obtaining a report from the third respondent to the effect that survey of the land was conducted and the lands in Survey No.698/1, Annur Road are classified as "Road Poramboke" and according to him, no notice, whatsoever, has been issued before surveying the said land.

3. The petitioner would further state that to his shock and surprise, the first respondent has issued the impugned notice dated 24.05.2017, stating among other things that the occupation of the petitioner in the form of petitioner-association was stated to be an unauthorised one and when attempts were made on 24.05.2017 by the first respondent to remove the encroachments, it was restricted to by the petitioner stating that no notice was served on the Head Office and in response to which, notice was served on the Head Office, calling upon the petitioner to vacate and deliver the vacant possession of the land within a period of one week from the date of receipt of impugned notice, failing which, appropriate action will be taken. The petitioner challenging the legality of the same, came forward to file this writ petition.

4. The writ petition was listed for admission on 14.09.2017 and this Court after going through the materials found that the writ petition is bereft of material particulars and therefore, the learned counsel appearing for the petitioner prayed for time to file better affidavit with supporting documents. When the matter was called today, additional typed set of documents alone has been filed without the supporting documents. The learned counsel appearing for the petitioner has invited the attention of the Court to the typed set of documents and would submit that as per the unregistered document dated 15.06.1990, the Secretary of Indian Communist Party's Trade Union Covi Mills Labour Union (Reg.No.84/1927), has handed over the possession of the premises bearing Door No.38 in Survey No.698/1 at Palladam Taluk, Samalapuram Village to the Somanoor India Communist Party's town Branch with full consent and from that dated onwards, the petitioner's association is in possession and enjoyment of the same and without taking note of the fact that their possession is not causing any hindrance to the free movement of traffic and free of other nuisances, the first respondent without due and proper application of mind, has issued impugned notice and hence, prays for interference.

5. Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents 1 to 4 would submit that even as per the petitioner's own admission, the petitioner is an encroacher and they have no right over the land under the unregistered document dated 15.06.1990 and after making necessary survey, steps are taken in accordance with law to remove the encroachment and it cannot be faulted with and hence, prays for dismissal of the writ petition with costs.

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

7. In the considered opinion of the Court, the unregistered document dated 15.06.1990, which is available as Document No. 1 in the typed set of papers cannot be taken cognizance of, in this writ petition, as it is an unregistered document. Be that as it may, the petitioner claims to be in possession of superstructure in Survey No. 698/1, Door No.38, Annur Road (Noyyal), Samalapuram, Coimbatore District and according to him, it is used as a rest place for workers and for conducting labour meetings. The petitioner in response to the impugned notice dated 02.11.2016, has also submitted his response dated 29.05.2017.

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

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 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:

and as per proviso of Section 28(2), any representation received within time limit shall be considered by the authority or officer concerned before passing final orders.

9. The petitioner in response to the impugned notices had submitted his response dated 29.05.2017 and this Court, in the light of the above facts and circumstances and without going into the merits of the claims projected by the petitioner, directs the first respondent to consider and dispose of the representation on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner and till such time, shall defer further proceedings in terms of the impugned order dated 24.05.2017.

10. The writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To:

1. The Assistant Divisional Engineer
Highways Construction and Maintenance
Palladam - 641 664
Tiruppur District.

2.The Assistant Engineer
Highways Construction and Maintenance
Palladam - 641 664
Tiruppur District.

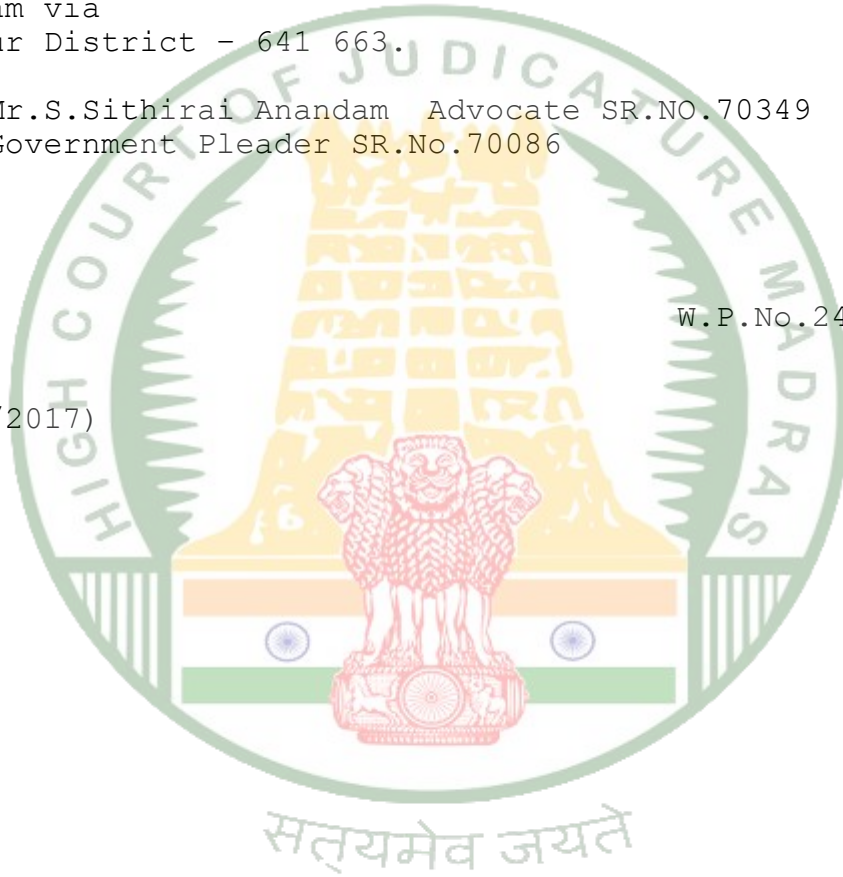
3.The Tahsildar
Palladam Taluk
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4.Samalapuram Town Panchayat
Represented by its Executive Officer
Pallapalayam Post
Mangalam via
Tiruppur District - 641 663.

+1 CC to Mr.S.Sithirai Anandam Advocate SR.NO.70349
+1 CC to Government Pleader SR.No.70086

W.P.No.24634 of 2017

GMI (CO)
VC (23/10/2017)



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