

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.09.2017

CORAM

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

WP.No.24707/2017 & WMP.No.26061/2017

V.Jothi

..Petitioner

Versus

The Assistant Divisional Engineer
Highways [Construction & Maintenance]
Ambattur Sub Division, Nehru Bazar,
Chennai-54.

..Respondent

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 from the respondent pertaining to the impugned notice Ka.No.541/2017/C2/ dated 30.08.2017 to quash the same and further direction that to make re-survey of the 200 feet Manali Oil Refinery Road without any partiality.

For Petitioner : Mr.P.Vijendran

For Respondent : Mr.R.Vijayakumar, AGP

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the sole respondent.

2 It is the claim of the petitioner that she is a resident of Door No.1/23, Subramaniyam Nagar, Thiruvotriyur, Chennai-19 for over 35 years and she has constructed a superstructure / building, investing a huge amount and further, according to the petitioner, the said superstructure is also assessed to statutory levies. The petitioner would further aver that one Rajan and Meena, who are the adjacent plot owners, had also put up a superstructure on the Northern side of her property and one Mr.Umapathy had sought for permission to have

access to his plot through the petitioner's property and it was refused and hence, he filed WP.No.4137/2017 on the file of this Court against [1] the Commissioner, Corporation of Chennai, [2] the Executive Engineer, Zone-I, Corporation of Chennai, Chennai-19, [3] the Member Secretary, Chennai Metropolitan Development Authority, Chennai-8, [4] the Superintending Engineer, State Highways Department, Teynampet, Chennai-18, [5] the Superintending Engineer, TNEB, Chennai-2, [6] Meena, [7] Rajan and [8] the Project Director, National Highways Authority of India, Chennai-16, praying for issuance of a writ of mandamus, directing the respondents 1 to 4 therein to remove all sort of encroachments made over the service road of the Madras Oil Refinery 200 feet road and Subramania Nagar approved layout roads, without any delay. A Division Bench of this Court, vide order dated 21.03.2017, after taking note of the submission made by the learned Standing counsel appearing for the Corporation of Chennai, that the Madras Oil Refinery 200 feet road is maintained by the State Highways and the State Highways is the competent authority to take action against the encroachers, had directed the 4th respondent therein, viz., the Superintending Engineer, State Highways, Chennai-18, to cause inspection of the site to be made within fifteen days from the date of receipt of a copy of that order and issued a further direction that if any encroachment is found, the same should be removed in accordance with law, within a maximum period of two months thereafter.

3 It is the specific case of the petitioner that the 4th respondent, without complying with the above said order, had straightaway issued the show cause notice on 17.08.2017 under section 28[2][ii] of the Tamil Nadu State Highways Act, 2001, calling upon the petitioner to offer her explanation as to why the encroachment made by her should not be removed. The petitioner, in response to the same, submitted her reply dated 29.08.2017, stated that at the time of inspection, neither the petitioner nor her family members were there and it has not been measured properly and the superstructure has also been given electricity connection and it is also subjected to statutory levies and therefore, requested the respondent to take note of her objections. The petitioner has also sent a legal notice on 29.08.2017, reiterating the same, for which, the respondent has also sent a reply dated 30.08.2017, informing the petitioner that only after inspection and measurement, it has been confirmed that the land in question belongs to Highways Department and followed by the final notice dated 30.08.2017 and challenging the legality of the same, the petitioner has come forward to file the present writ petition.

4 Mr.P.Vijendran, learned counsel for the petitioner would submit that no doubt, the petitioner is an encroacher ;

but the fact remains that she has put up the superstructure about 35 years back, spending a huge amount and a part of the premises / superstructure is used for carrying on commercial activities and the other part of the superstructure is used for residential purpose and the respondent, without understanding the scope and purport of the order dated 21.03.2017 made in WP.No.4137/2017 and without properly making survey and measurement, has issued the show cause notice under section 28 [2][ii] of the Tamil Nadu State Highways Act, 2001, for which the petitioner has also submitted her detailed response and without taking note of the same, by a cryptic order, has rejected the request of the petitioner vide communication dated 30.08.2017 followed by the final impugned notice dated 30.08.2017 and would further add that though there are very many encroachments in the same locality, the respondent is picking and choosing the petitioner alone and therefore, the prays for appropriate orders.

5 Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the sole respondent would submit that the respondent, in compliance of the order dated 21.03.2017 made in WP.No.4137/2017, having found that the petitioner had encroached upon the property belonging to the State Highways, has taken action strictly in accordance with law under the provisions of the Tamil Nadu State Highways Act, 2001, and prays for dismissal of the writ petition.

6 In response to the said submission, the learned counsel for the petitioner has produced photographs and would submit that the ground portion has been leased out for commercial purpose and in another portion, the family of the petitioner is residing. This Court has put a specific question to the learned counsel for the petitioner as to the superstructure which is shown in the photograph, is an authorised or deviated construction and it is the submission of the learned counsel that the building has been put up without any planning permission ; but however, since it is subjected to statutory levies for very many years, it deemed to be regularised.

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

8 It is relevant to extract section 28 of the Tamil Nadu State 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 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 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:

Provided that any representation received within the time limit shall be considered by the authority or officer concerned before passing final orders."

9 Admittedly, the petitioner is an encroacher of the land belonging to the State Highways, as seen from the photograph annexed in page No.97 of the typed set of documents and her response to the notice issued under section 28[2][ii] of the Tamil Nadu State Highways Act, 2001, followed by the Legal Notice dated 29.08.2017 do not disclose any supporting materials as to the right and claim of the petitioner over the Highways land. The petitioner, apart from encroaching the Highways land has also put up an unauthorized structure and leased out a portion of the said premises for commercial activities. In the considered opinion of the Court, the respondent has duly followed the due process of law and took action and as such, the impugned order does not warrant interference.

10 In the light of the submission made by the learned counsel for the petitioner that there are very many encroachments had taken place, the respondent is directed to take necessary steps to remove the said encroachments also in public interest and carry out the said exercise in accordance with law as expeditiously as possible. The petitioner is granted time till 25.10.2017 to remove the encroachment and hand over the possession of the land in question to the respondent.

11 In the result, the writ petition is dismissed subject to the above observations and direction. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

AP

To

The Assistant Divisional Engineer
Highways [Construction & Maintenance]
Ambattur Sub Division, Nehru Bazar,
Chennai-54.

+1cc to Mr.P.Vijendran, Advocate Sr. 67445
+1cc to the Government Pleader Sr. 67752

WP.No.24707/2017

RSY (CO)
VR(04/10/2017)

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