

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.4122/2012 & MP.Nos.1&2/2012

K.Ramasamy

Petitioner

Vs

1 The Assistant Divisional Engineer
Highways Department
Tiruchengode, Namakkal District.

2 The District Collector
Namakkal District, Namakkal.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance a Writ of certiorarified mandamus calling for the records pertaining to the proceedings made in Letter NO.17584/Oo dated 10.02.2012 issued by the 1st respondent herein, quash the same and consequently, direct the 1st respondent herein to grant patta to the petitioner in respect of 7 cents in S.No.172/2, Marapparai Village, Namakkal District.

For Petitioner : Mr.N.Manoharan

For R1&R2 : Mr.A.N.Thambidurai, Spl.GP

ORDER

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

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

2 On an earlier occasion, the petitioner filed WP.No.17584/2009 against the respondents 1 and 2 herein as well as against the President of Marapparai Village Panchayat, Mallasamudram Panchayat Union, Tiruchengode Taluk, Namakkal

District, praying for issuance of a writ of certiorari, to quash the proceedings dated 11.08.2009 made in Letter No.147/09/Oo issued by the 1st respondent and consequently, direct the 2nd respondent therein to grant patta to the petitioner in respect of 7 cents of land in S.No.172/2 of the said village.

3 This Court had disposed of the said writ petition on 28.08.2009 and it is relevant to extract paragraphs No.5 to 7 of the said order:-

"5 After having perused the stand taken by the respondent as stated above, it is clear that the respondent has invoked the provisions of enactment under which the first respondent has no jurisdiction. However, it is an admitted case that the petitioner is an encroacher of Government land, therefore, if the Highways Department is the rightful owner, they would be entitled to initiate action as per Tamil Nadu Highways Act, 2001.

6 In the light of the above, it is held that the impugned notice issued by the first respondent under the provisions of the Public Premises Act/Land Encroachment Act is without jurisdiction. Accordingly, the same is quashed. However, this shall not prevent the respondent from initiating action against the petitioner in the manner known to law after issuing notice as contemplated under the relevant enactments.

7 In the upshot, the writ petition is allowed and the impugned order is quashed on the above observations. Consequently, connected miscellaneous petition is closed."

4 The grievance expressed by the petitioner is that though the earlier notice dated 11.08.2009 issued by the 1st respondent invoking the provisions of the Tamil Nadu Highways Act, 2001, the provisions of the Tamil Nadu Public Premises [Eviction of Unauthorized Occupants] Act, 1975 and the Tamil Nadu District Municipalities Act, have been quashed, the 1st respondent once again had issued the present impugned notice dated 10.02.2012, which is verbatim reproduction of the earlier notice dated 11.08.2009 and therefore, the petitioner is constrained to approach this Court by making a challenge to the said proceedings.

5 Mr.N.Manoharan, learned counsel for the petitioner would submit that the petitioner is in possession of the land in question for several years and also put up a superstructure which is also assessed to House Tax and earlier, when his possession was sought to be disturbed, he filed WP.No.24538/2005 and the said writ petition was disposed of by this Court on 01.08.2005, wherein this Court had directed the respondent therein to follow the provisions of the Tamil Nadu Land Encroachment Act, 1905, before restoring the possession and admittedly, no action was taken and after long time, the impugned notice was issued on 11.08.2009, which was put to challenge in WP.No.17584/2009 and it was quashed by this Court with a liberty to the 1st respondent to initiate action against the petitioner in the manner known to law, after issuing notice and once again, the present impugned notice has been issued, with very same allegations and the learned counsel would further urge that the right and possession of the land in question in favour of the petitioner cannot be kept in limbo and therefore, prays for quashment of the same.

6 The matter was listed on 19.09.2017 and this Court, on comparison of the notice dated 11.08.2009 as well as the present notice dated 10.02.2012 issued by the 1st respondent, felt that it is nothing but the verbatim reproduction of the earlier notice which was quashed by this Court in WP.No.17584/2009 and directed the concerned official to be present and accordingly, Mr.P.Selvaraju, Assistant Divisional Engineer, Highways Department-1st respondent herein, is present before this Court.

7 Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents would submit that due to severe and heavy work pressure, the present impugned notice dated 10.02.2012 came to be issued and the concerned official has also tendered apology and on instructions, would submit that action with regard to the alleged encroachment on the part of the petitioner, would be initiated strictly in accordance with law.

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

9 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 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."

10 As rightly pointed out by the learned counsel for the petitioner, the impugned notice dated 10.02.2012 which is the subject matter of challenge in this writ petition, is verbatim reproduction of earlier notice dated 11.08.2009 issued by the 1st respondent which has been quashed by this Court in WP.No.17584/2009. In the considered opinion of the Court, the present impugned notice containing the very same allegations, would exhibit total non-application of mind on the part of the 1st respondent and therefore, it warrants interference.

11 A Single Bench of this Court, while disposing of the writ petition in WP.No.17584/2009 on 28.11.2011, has granted liberty to the 1st respondent to initiate action in the manner known to law after issuing notice as contemplated under the relevant enactments. It is also the submission of the learned Special Government Pleader that the 1st respondent is invoking the provisions of section 28 of the Tamil Nadu Highways Act, 2001, and in the light of the facts and circumstances, the impugned notice dated 10.02.2012 shall be treated as the notice issued under section 28[2] of the Tamil Nadu Highways Act, 2001, and the petitioner is at liberty to submit his response in the

form of representation along with the copies of the relevant and authenticated documents as to his long possession and enjoyment of the property, within a period of four weeks from the date of receipt of a copy of this order to the 1st respondent and the 1st respondent, upon receipt of the same, shall consider the said representation on merits and in accordance with law and pass appropriate orders within a further period of ten weeks thereafter and communicate the decision taken, to the petitioner and till such time, the 1st respondent shall defer further proceedings in terms of the impugned notice dated 10.02.2012. It is also made clear that till the disposal of the representation to be submitted by the petitioner, in pursuant to the orders passed by this Court, the petitioner shall not create any third party rights in respect of the land and superstructure in question.

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

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

AP
To

- 1 The Assistant Divisional Engineer
Highways Department
Tiruchengode, Namakkal District.
- 2 The District Collector
Namakkal District, Namakkal.

+1 cc to M/s.N.Manoharan Advocate sr 72381
+1 cc to the Govt Pleader sr 72879

WP.No.4122/2012

aa10/11/2017