

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.28078/2011 & MP.No.1/2011

1. Kunjappan
2. Ganesan
3. Palanisamy
4. Chinnaponnu
5. Santhi
6. Chinnammal
7. Kunjappan
8. Mathusamy
9. Devi
10. Sakthivel
11. Govindan
12. Mani
13. Subbammal
14. Manickam

.... Petitioners

- 1.The Collector,
Salem District,
Salem.

- 2.The Assistant Divisional Engineer,
Construction and Maintenance,
Highways, Mettur Dam - 1,
Salem District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance a Writ of Certiorarified Mandamus calling for the records relating to notice issued by the 2nd respondent dated 22.08.2011 and 01.11.2011, quash the same and direct the 1st respondent to issue patta to the petitioners for their respective occupation in S.No.61/1, situated on the northern side of the Kaveripuram Village, Mettur Taluk.

For Petitioners : Mr.S.Doraisamy for
Mr.V.Elangovan
For Respondents : Mr.A.N.Thambidurai, Spl.GP

ORDER

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

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

2 The petitioners in the affidavit would aver among the other things, that they are the agricultural coolie workers and during the year 1975, they occupied the lands in S.No.61/1 situate on the Northern side of the Highways road in Kaveripuram Village, Mettur Taluk and also put up superstructures and the same are also subjected to the statutory levies. The superstructures put up by the petitioners have also been given electricity service connection and they have also been provided with basic amenities. The petitioners also submitted a joint representation dated 23.04.2007 to the Tahsildar, Mettur, praying for issuance of House Site Pattas and pending consideration of the same, they were shocked and surprised to receive the impugned notice dated 22.08.2011 issued by the 2nd respondent, alleging that they have encroached upon the land belonging to the Highways Department and challenging, the legality of the same, they came forward to file the present writ petition.

3 Mr.S.Doraisamy, learned counsel appearing for the petitioners has invited the attention of this Court to the typed set of documents and would submit that action is being initiated by the 2nd respondent in compliance of the order dated 05.01.2010 made in WP.No.21105/2009 filed by one Mr.Jayapal and admittedly, the alleged encroachers have not been made as parties. It is the further submission of the learned counsel for the petitioner that the petitioners had also given a joint representation dated 23.04.2007, praying for issuance of House Site Pattas by enclosing all the relevant and necessary documents and the said application/representation is pending consideration and without following due process of law, attempts are being made to dispossess them and therefore, prays for appropriate orders.

4 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents has invited the attention of this Court to the counter affidavit of the 2nd respondent and would submit that the lands in occupation of the petitioners as encroachers, is located at KM 22/4, Mettur-Palar

Road and it is an important major District road which connects the State of Tamil Nadu and the State of Karnataka and maintained by the Mettur Highways Construction and Maintenance Sub-Division and the particular portion is known as "Govindapadi Bus Stop" and it is very narrow and it became an accident spot and therefore, a fair and conscience decision has been taken to remove the encroachment and expand the road to avoid future accidents and therefore, the impugned notice issued by the 2nd respondent cannot be faulted with and prays for dismissal of the writ petition.

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

6 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."

7 This Court, taking into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioners, permits the petitioners to submit individual representations to the 2nd respondent along with a copy of this order along with the copies of the relevant and authenticated documents as to their long possession and enjoyment and especially, their right to be in possession, within a period of four weeks from the date of receipt of a copy of this order and the 2nd respondent, upon receipt of the same, shall follow the proviso to section 28[iii] of the Tamil Nadu Highways Act, 2001, and pass orders on the said representations on merits and in accordance with law within a further period of eight weeks thereafter and communicate the decision taken, to the petitioners and till such time, the said official, shall defer further decision as to the removal of the encroachments. It is made clear that the petitioners, till the disposal of the representations by the 2nd respondent, shall not create any third party rights in respect of the site and superstructures in question and shall also not alter the physical features of the superstructures.

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

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

AP

To

1.The Collector,
Salem District,
Salem.

2. The Assistant Divisional Engineer,
Construction and Maintenance,
Highways, Mettur Dam - 1, Salem District.

+lcc to Mr.S.Doraisamy, Advocate, S.R.No.71540

WP.No.28078/2011

CB(30/10/2017)