

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

And

THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.No.15941 of 2017

and WMP.Nos.17254 and 22623 of 2017

A.Ganesan

.. Petitioner

vs.

1.The District Collector,
Kancheepuram District.

2.The Divisional Engineer,
Highways Department,
Chennai Metropolitan Development Project,
Division-IV, Alandur, Chennai-600 016.

3.The Assistant Divisional Engineer,
Highways Department,
Construction and Maintenance Wing,
Tambaram Sub-Division, Chennai-42.

.. Respondents

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 of the 3rd respondent vide Notice No.149/2016-275, Medavakkam/e.va.tho.a/dated 09.06.2017 and quash the same and consequently, direct the respondents to make proper survey in respect of lands at Irumpuliyur Road, Medavakkam Village.

For Petitioner : Mr.V.Vijay Shankar

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, this Writ Petition is taken up for final disposal.

2. The petitioner claims that he has purchased a land admeasuring to an extent of 1056 sq.ft. in S.No.400/A3 in Medavakkam through registered Sale Deed dated 17.10.1988 and another extent of land admeasuring 1111 ½ Sq.ft. in S.No.432/1 through registered Sale Deed dated 17.10.1988 and both the properties are situated in Medavakkam. The petitioner claims that he is the owner of approximately 2671 sq.ft. of lands comprised in S.Nos.400/A3 and 432/1. The petitioner would state that he has put up construction on the said property and it has also been assessed to property tax and other statutory levies from 1994-1995 onwards. The petitioner is running a provisional store in the said property and it is his only source of livelihood. It is further stated by the petitioner that the third respondent has issued a notice under Section 28(2)(ii) of the Tamil Nadu Highways Act, 2001 alleging that the petitioner had encroached upon lands admeasuring 114.75 sq.mtrs consisting of concrete building and shed and with a direction to remove the same and in pursuant to the said notice, the officials of the respondents came and pulled down the shed and took possession of the area on which the shed was constructed.

3. The petitioner was under the impression that in respect of rest of the lands in question, his possession will not be disturbed and however, to his shock and surprise, the officials of the respondents called upon the petitioner to demolish the entire shop and handover possession of the entire land. Challenging the same, petitioner filed W.P.No.17780 of 2016 praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned notice dated 15.02.2016 issued by the third respondent with regard to concrete building and GI sheets owned by the petitioner and to quash the same and consequently direct the respondents to make proper survey in respect of lands at Velacherry Main Road, Medavakkam Village and this Court, vide order dated 12.05.2016, has disposed of the writ petition by directing the petitioner to reply to the impugned show cause notice within a period of three weeks and upon receipt of the same, the third respondent was directed to pass orders in accordance with law within a stipulated time, after affording opportunity of personal hearing to the petitioner and further, directed that till such time, the third respondent shall not disturb the petitioner's possession. Accordingly, the petitioner has submitted his explanation/representation dated 24.05.2016, followed by legal

notices dated 03.11.2016, 16.01.2017 and 10.04.2017. However, the third respondent has issued the impugned notice dated 09.06.2017 under Section 28(2)(ii) of the Tamil Nadu Highways Act, 2001, calling upon the petitioner to vacate the lands. Challenging the legality of the same, the petitioner has come forward with this writ petition.

4. Mr.V.Vijay Shankar, learned counsel appearing for the petitioner would submit that to the shock and surprise of the petitioner, the third respondent, without properly appreciating the contents of his representation as well as the legal notices, has issued the impugned notice dated 09.06.2017 stating that the petitioner has encroached upon lands admeasuring 65.00 sq.mtrs in S.Nos.433 and 499/12 and put up concrete structure and called upon him to remove the same within 7 days from the date of receipt of the notice, failing which further action would be taken. The learned counsel appearing for the petitioner would further submit that originally the land has been classified as Grama Natham and while taking re-survey, the petitioner has not been put on notice and as such, the present classification showing the lands in question as Government Poromboke is wholly unsustainable. It is the further submission of the learned counsel appearing for the petitioner that an over-bridge has also come on place and so also service road and therefore, there is no necessity to lay storm water drain right across the petitioner's property and the construction of storm water trench is not a straight one and the design has been made in such a way that the storm water trench cut across the petitioner's property and further that the petitioner is running the provision store in the said land for very many years and considering the factual aspects and on sympathetic consideration, this Court may quash the impugned notice and prays for interference.

5. Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the petitioners in WMP.No.22623 of 2017/official respondents in the writ petition has drawn the attention of this Court to the counter affidavit of the third respondent as well as the photographs and would submit that no superstructure has been demolished and the petitioner has also removed his articles and belongings and the trench has been laid for the purpose of storm water drain and the said need is absolute for the north east monsoon. Attention of this Court was also invited to Natham Settlement Scheme Fair Adangal Register, which would disclose that the lands in Old Survey Nos.432/1P, 432/3P and 432/3P [New S.No.432] were originally classified as "Village site" and now it is re-classified as "Government Poromboke" and in the remarks column it is shown as "Velachery Main Road" and insofar as Old S.No.400/2P, 3 and 4 [New S.No.499] is concerned, originally it was classified as Village Site and after re-classification, it was classified as "Government Poromboke" and in the remarks column, it was shown

as "Road" and as such, the petitioner has no semblance of any right or title in respect of the lands in question and further, on account of the subsistence of interim order, the laying of storm water drain could not take place and prays for dismissal of this writ petition.

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

7. The primordial submission of the learned counsel appearing for the petitioner is that re-classification of Old S.Nos.432/1P, 432/3P, 432/3P [New S.No.432] and Old S.No.400/2P, 3,4 [New S.No.499] which was originally classified as "Village Site", now classified as "Government Poromboke", has been done behind the back of the petitioner and as such, the present re-classification is per se unsustainable and would further add that the lands in question was in possession of the petitioner's predecessor in title for quite long time and thereafter, the petitioner continues to be in possession and he has put up superstructure and running a provision store, which is his sole source of livelihood and therefore, the impugned order is to be quashed.

8. As per Natham Settlement Scheme Fair Adangal Register, the lands in Old S.Nos.432/1P, 432/3P, 432/3P [New S.No.432], though originally was classified as Village Site, after re-survey it was classified as "Government Poromboke" and in the remarks column it is shown as "Velachery Main Road" and insofar as Old S.No.400/2P, 3, 4 [New S.No.499], though originally classified as Village Site, after re-survey was classified as "Government Poromboke" and in the remarks column, it was shown as "Road".

9. A perusal of the photographs produced by the learned Special Government Pleader would prima facie would indicate that behind the petitioner's building, a trench has been put up for construction of drainage canal and except the structure, nothing remains in the said building. It is also brought to the knowledge of this Court that the petitioner has removed the articles and other belongings lying in the said building.

10. The third respondent has invoked Section 28(2)(ii) of the Tamil Nadu Highways Act, 2001 and it is relevant to extract the same :

"S.28.Prevention of Encroachment:

(1) The Highways authority or any person authorised by it in this behalf shall, at such times 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;

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

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

11. In the light of the above facts and circumstances, this Court permits the petitioner to submit his response to the impugned notice dated 09.06.2017 by enclosing relevant authenticated documents within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the third respondent is directed to consider the same and pass orders on merits and in accordance with law within a period of two weeks thereafter and communicate the decision taken, to the petitioner and till such time, both the parties shall maintain status quo as per the photographs made available by the learned Special Government Pleader and it shall also form part of the record.

12. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

jvm

To

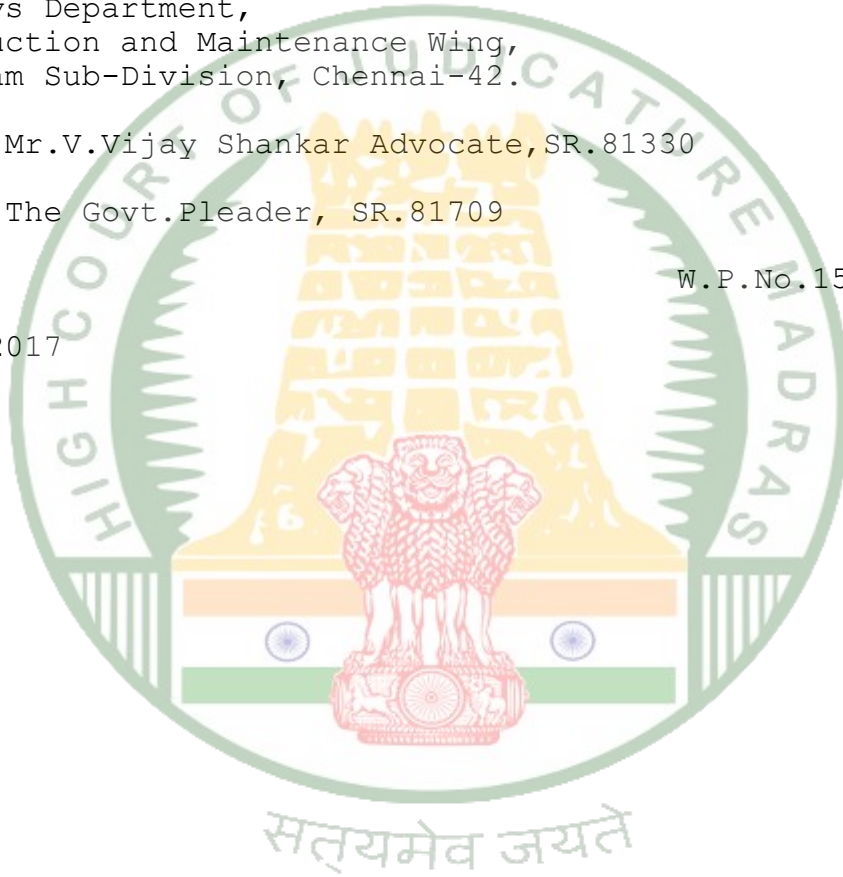
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+ 1 cc to Mr.V.Vijay Shankar Advocate,SR.81330

+ 1 cc to The Govt.Pleader, SR.81709

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NR 08/12/2017



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