

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
And
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.2537 of 2013

And

M.P.No.1 of 2013

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Highways Department,
Fort St.George,
Chennai 600 009.
- 2.The Chief engineer,
Highways Department,
Government of Tamil Nadu,
Fort St.George,
Chennai 600 009.
- 3.Divisional Engineer (Highways),
Erode High Road, Erode.2.
- 4.Assistant Divisional Engineer (Highways),
Erode High Road,
Erode.2.
- 5.Assistant Engineer (Highways),
Erode High Road, Erode.2.
- 6.The District Collector,
Erode District, Erode. ... Appellants

Vs.

J.Shekih Amanulla
& Amenallah Khan ... Respondent

Prayer:

Writ appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 18.04.2013 made in W.P.No.22326 of 2004.

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorari to call for the entire records ending with the notice dated 09/07/2004 in ROC.NO.21/04/Asst.Engineer, issued by the Assistant Engineer viz., 5th respondent and the notice Na.Ka.834/2004/Jonior Engineer dated 13/07/2004 issued by the Assistant Divisional engineer viz., the 4th respondent and quash the same.

For Appellants : Mrs.A.Srijayanthi
Special Government Pleader
For Respondent : Mr.T.Shanmugam

J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN,J.)

The Highways Department initiated proceedings for eviction against the respondent as he was found in un-authorized occupation of the Highway land. The notice issued by the competent Authority under the Highways Act for removal of encroachment was challenged by the respondent before the writ Court in W.P.No.22326 of 2004. The learned Single Judge allowed the writ petition on the ground that the respondent is using the land for conducting Anbu Illam, an Orphanage and as such, he should be evicted only in case there is a proposal to widen the road. Feeling aggrieved by the said order, the State is before us.

2.The learned Special Government Pleader by producing a copy of the letter dated 13.11.2017 forwarded by the Social Welfare Officer,

Erode District submitted that the respondent has been conducting the Orphanage without taking licence. According to the statutory Authority, permission was not granted for establishing or running the Orphanage and the Government has closed the Institution.

3.There is no dispute that the respondent is in possession of the Poromboke land having an extent of 0.5 acres at Door No.320, Barathi Nagar. The land is situated on the side of Erode - Karur Road which is earmarked for widening the Highway.

4.The writ petition filed by the respondent challenging the eviction proceedings was allowed by the learned Single Judge only on account of humanitarian consideration that he has been running an Orphanage. No right would accrue to the respondent to encroach Government land on the ground that he is running an Orphanage.

5.The report submitted by the Sub-Inspector of Police, Modakurichi and the Social Welfare Officer, Erode, clearly shows that the respondent has been conducting an Orphanage with large number of inmates without any kind of facility. There is no separate accommodation for men and women. In any case, conduct of an Orphanage would not justify encroachment on a Government land and that too meant for widening the Highways.

6.It is not the case of the respondent that he is in ownership of the land in question. Even according to the respondent, he is only an encroacher, but however, he pleaded equity on the ground that the land is used for a good cause. Now that it is made out that the respondent has been conducting an Orphanage without obtaining licence from the statutory Authorities and that it is in a vulnerable condition, no relief could be granted to him. The learned Single Judge was more on the ground of equity than law while deciding the writ petition. There is no statutory violation pointed out by the respondent in the matter of taking action against him for removal of encroachment. Such being the position, we do not find any reason to support the order passed by the learned Single Judge.

7.In the result, the order dated 18.04.2013 is set aside. The writ petition in W.P.No.22326 of 2004 is dismissed. The appellants are given liberty to take possession of the land forthwith, with Police assistance, if necessary.

8.The intra court appeal is allowed as indicated above. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

TO:

1. The Secretary,
Highways Department,
Fort St.George,
Chennai 600 009.

2.The Chief engineer,
Highways Department,
Government of Tamil Nadu,
Fort St.George,
Chennai 600 009.

3.The Divisional Engineer (Highways),
Erode High Road, Erode.2.

4.The Assistant Divisional Engineer (Highways),
Erode High Road,
Erode.2.

5.The Assistant Engineer (Highways),
Erode High Road, Erode.2.

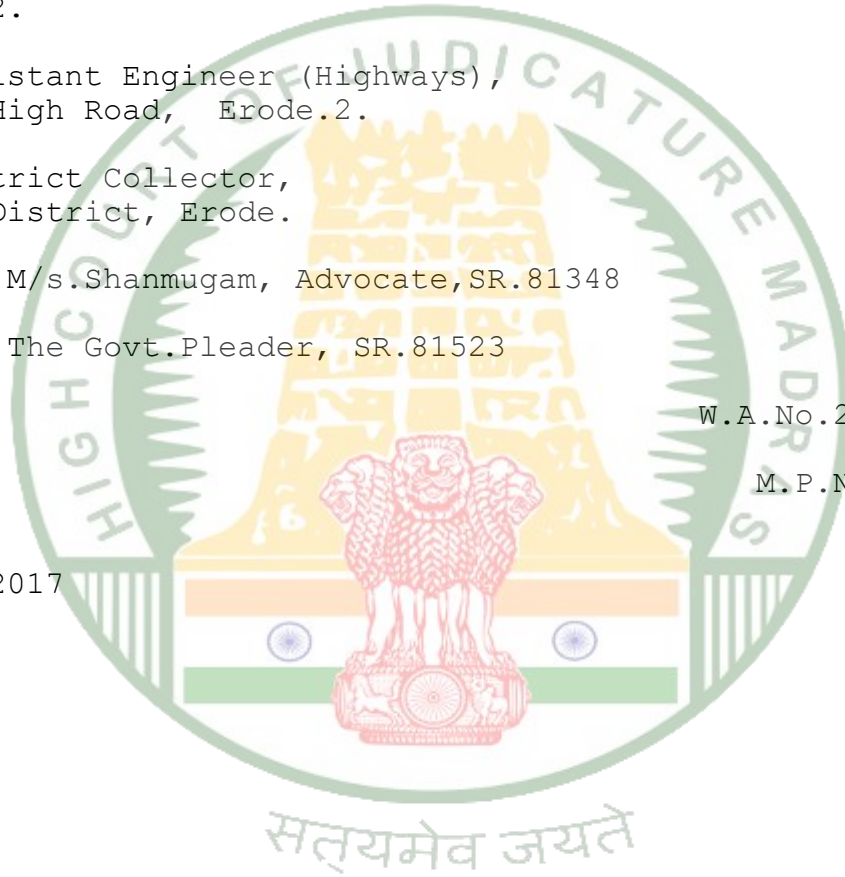
6.The District Collector,
Erode District, Erode.

+ 1 cc to M/s.Shanmugam, Advocate,SR.81348

+ 1 cc to The Govt.Pleader, SR.81523

W.A.No.2537 of 2013
And
M.P.No.1 of 2013

PPA(CO)
NR 20/11/2017



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