

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2017

CORAM :

THE HONOURABLE MR. JUSTICE.S.VAIDYANATHAN

W.P.No.37121 of 2004

Reginald Abraham

.. Petitioner

Vs

1. Government of Tamil Nadu,
Highways Department,
rep. by its Secretary,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Additional Divisional Engineer,
Saidapet Taluk,
Chengalpet District.

3. The Collector,
Kancheepuram District,
Kancheepuram.

4. Mangala Lakshmi

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus directing respondents 1 to 3 to remove the encroachment in front of the property of the petitioner mentioned in the Schedule.

For Petitioner : Mr.S.Venkatesan

For Respondents 1 to 3 : Mr.Akhil Akbar Ali,
Government Advocate

For 4th Respondent : No representation

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O R D E R

The petitioner has come forward with this Writ Petition seeking a direction to respondents 1 to 3 to remove the encroachment in front of his property, thereby denying his access.

2. According to the petitioner, he and his wife, viz. Sarojini Reginald are the absolute owners of the properties

mentioned in A and B Schedule, which were purchased by them under two Sale Deeds, dated 30.05.1993. He stated that sometime in the year 1987/1988, one Chellaiah Nadar and his family had encroached a portion of the road and started putting up permanent structure with walls adjacent to his compound wall close to his grill gate and he attempted to regularize the same by addressing the said structure to property tax. The Electricity Department have also given permission to have electricity connection for the said illegal construction and the Department of Telecommunication has also provided Telephone lines and allowed the encroacher to have Telephone Booth on the road side margin despite knowing fully well that the superstructure put up by them is an encroachment on the Highways.

3. The grievance of the petitioner is that in spite of all his representations to the authorities concerned for removal of encroachment, no action is taken by them. Hence, the petitioner was constrained to file a Civil Suit against the said Chelliah Nadar in O.S.No.251 of 1999 before the District Munsif Court, Tambaram. Since the said Chelliah Nadar passed away pending the suit, his legal heir, who is the 4th respondent herein was impleaded as a party. Since the petitioner was a Government Servant at the time of filing of the suit and that his counsel did not represent the petitioner, the said suit came to be dismissed for default in August 2003. Hence, having no other alternative remedy, the petitioner has come up with this Writ Petition.

4. Learned counsel for the petitioner contended that due to the encroachment put up in front of the petitioner's property, the petitioner is unable to have free access to his property. He submitted that dismissal of the Civil Suit for default is not a bar for the respondents to take appropriate action to demolish the illegal structure.

5. There is no representation for the 4th respondent. However, learned Government Advocate appearing for respondents 1 to 3 submitted that if the building in question is constructed in the property belonging to the Government, necessary action will be taken by the authorities concerned by taking photographs/videograph of the place, after hearing the petitioner and the 4th respondent and any other person residing in that place.

6. Heard the learned counsel on either side and given careful consideration to their submissions.

7. As rightly pointed by the learned counsel for the petitioner, dismissal of the Civil Suit for default is not a bar

for the respondents to entertain a Writ Petition, more particularly, when there is illegal encroachment. In view of the same, the respondents are directed to inspect the building in question and if it is found to be an encroachment in the Government property, they shall demolish the same within a period of two months from the date of receipt of a copy of this order.

8. It is made clear that if no action is taken by the respondents or their authorities to take the possession of the land under encroachment within the above stipulated time, disciplinary action has to be initiated and punishment including dismissal from service has to be imposed against the staff, who is responsible for taking possession and who is not willing to discharge his duties to safeguard the interest of the Government land in question. After removal of the encroachment in the property in question by the respondents within the stipulated period as directed supra, the compliance report shall be submitted to the Registrar General of this Court forthwith, who shall place the same before me within one week from the date of receipt of the said compliance report. The District Collector, Kancheepuram District and the Superintendent of Police, Kancheepuram District shall extend their support to remove the above said encroachment.

The Writ Petition is allowed with the above direction and observation. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary,
Government of Tamil Nadu,
Highways Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Additional Divisional Engineer,
Saidapet Taluk,
Chengalpet District.

3. The Collector,
Kancheepuram District,
Kancheepuram.

4.The Superintendent of Police,
Kancheepuram District.

5.The Registrar General,
High Court, Maddras.

6.The Section Officer,
Legal Cell, High Court, Madras.

+1cc to Mr.S.Venkatesan, Advocate Sr. 66480

Order in
W.P.No.37121 of 2004

KS (CO)
VR(26/10/2017)



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