



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 28.08.2017

CORAM :

WEB COPY

**THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.P (MD) No.16134 of 2017
and
W.M.P. (MD) No.12804 of 2017

K.S.Ahmed

... Petitioner

Vs.

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Assistant Divisional Engineer,
State Highways,
Construction and Maintenance,
Senkottai,
Tirunelveli District.

3.The Tahsildar,
Senkottai,
Tirunelveli District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for records relating to the impugned order made by the 2nd respondent in K.No.128-3/2017/A2 dated 16.08.2017 and quash the same as illegal.

For Petitioner : Mr.M.Mahaboob Athiff
For Respondents : Mr.T.S.Md. Mohideen, AGP

O R D E R

(Order of the Court was made by G.R.SWAMINATHAN, J.)

In this writ petition, the writ petitioner has challenged the impugned order dated 16.08.2017 issued by the second respondent calling upon the writ petitioners to remove the encroachment in question.



2.The encroachment is in survey numbers mentioned in the affidavit filed in support of the writ petition in Vadakarai - Adavinayinaar Anaikattu Road. The lands in question belong to State Highways. The second respondent issued notice to the writ petitioner calling upon them to prove his right over the said properties. Even after such opportunity was afforded, the writ petitioner could not establish his title or right over the said property. Since highway encroachments are inherently objectionable, the second respondent issued notice in causing its removal.

3.The learned counsel appearing for the writ petitioner would submit that the removal of the encroachment without giving him adequate time would cause exceptional prejudice and hardship to him. It was also submitted that the writ petitioner belongs to economically poorer sections of the society. The writ petitioner has also filed undertaking affidavit to vacate the land in question on or before 15.05.2018. The learned counsel however wanted a direction to be issued to the first respondent to consider his plea for allotting alternative site.

4.The writ petitioner is at liberty to approach the first respondent with a suitable application seeking allotment of a free house site. The first respondent is directed to consider the same sympathetically, if the writ petitioner is otherwise eligible. In any event, the writ petitioner shall vacate the lands in question as undertaken by him before this Court on or before 15.05.2018. The order impugned in this writ petition is not quashed and it is sustained. But the second respondent is directed to keep the same in abeyance till 15.05.2018.

5.The writ petition is disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub-Assistant Registrar

To

1.The District Collector, Tirunelveli District, Tirunelveli.

2.The Assistant Divisional Engineer, State Highways,
Construction and Maintenance, Senkottai,
Tirunelveli District.

3.The Tahsildar, Senkottai, Tirunelveli District.

+One cc to The Special Government Pleader, SR.No.75158

Arul/akm

RL/5C/2P/KK/SAR1/10/10/2017

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<https://hcservices.ecourts.gov.in/hcservices/>

and

W.M.P.(MD) No.12804 of 2017

28.08.2017