



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

AND

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD) No.19353 of 2017

and

W.M.P (MD) No.15672 of 2017

Rajanbabu

: Petitioner

.vs.

1.The District Collector,
Trichy.

2.The Divisional Engineer,
Project Division,
State Highways Department,
Pon Nagar,
Trichy.

3.The Assistant Divisional Engineer,
(Highways Department),
Project Sub-Division II,
Trichy.

4.The Assistant Engineer (Projects),
Highways Department,
Division IV,
Trichy.

5.The Revenue Divisional Officer,
Trichy.

6. Sathappan

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorari to call for the records relating to the impugned proceedings in Na.Ka.A.1 - 11686/2017 dated 26.09.2017 of the fourth Respondent and quash the same as illegal.

For Petitioner
For R-1 to R-5

:Mr.AN.Ramanathan
:Mr.M.Govindan,
Special Government Pleader

(R-6 is given up)

**O R D E R**

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

The Petitioner has filed the present Writ Petition praying for passing of an order by this Court in calling for the records relating to the impugned proceedings in Na.Ka.A.1 - 11686/2017 dated 26.09.2017 issued by the fourth Respondent and to quash the same as illegal one.

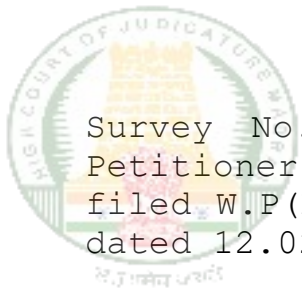
2. Heard both sides. No counter-affidavit is filed on behalf of Respondent Nos.1 to 5.

3. By consent, the main Writ Petition itself is taken up for final disposal.

4. According to the Petitioner, his grandfather has purchased a land measuring an extent of 660 sq. ft. in S.F.No.90 Ward-D, Block - 15 of Sevalur Village, Manapparai Taluk, Trichy District through registered sale deed dated 30.05.1952 and from the date of purchase, the entire property was in possession and enjoyment with his family and in the family arrangement, the above property has come to his hands. The said property abutting to Trichy - Dindigal Highway.

5. It is the case of the Petitioner that Respondent Nos.2 and 3 had decided to construct a over-bridge in the highway and for that purpose, an extent of 45.5 sq. mt. (436 sq. ft.) alone was acquired from the Petitioner by the fifth Respondent as per proceedings dated 07.11.2012. The remaining portion after acquisition is with the Petitioner till date and he has reconstructed a building and in the property, there are shops. The local body has also constructed drainage at the end of the road.

6. At this stage, the Learned Counsel for the Petitioner brings it to the notice of this Court that the sixth Respondent (given up in the Writ Petition), who has a land in Survey No.89B, is having property behind the property and he has not have the road facing to his property as the Petitioner's property in Survey No.90 is before his property abutting the National Highway. It has necessitated the sixth Respondent (Given up in the Writ Petition) to file O.S.No.326 of 2013 on the file of the District Munsif Court, Manapparai, seeking relief of injunction against the Petitioner and two others. The Petitioner in the said suit has filed a written statement refuting the claim. The said suit is pending as on date. The grievance of the Petitioner appears to be that the third Respondent/ Assistant Divisional Engineer, (Engineering Department), Project Sub-Division II, Trichy, had issued a notice way back on 06.02.2014 to remove the encroachment in



Survey No.90. In fact, the said notice, according to the Petitioner was issued without application of mind and hence, he filed W.P(MD)No.2315 of 2014 and the same was allowed by an order dated 12.02.2014, wherein it is inter alia observed as under:

"In such view of the matter, we dispose of the Writ Petitions in the following terms:

(i) The impugned notices shall be treated as notices calling upon the petitioners to submit their explanation.

(ii) The petitioners are at liberty to submit their reply/explanation, with relevant documents to the said notices within 15 days from the date of receipt of a copy of this order, before the 3rd respondent.

(iii) On receipt of such explanations, within the time limit prescribed, the 3rd respondent is directed to consider them and pass orders, on merits and in accordance with law.

(iv) Till such time final orders are passed, the occupation of the petitioners shall not be disturbed either by the authorities."

7. It comes to be known that subsequent to the order dated 12.02.2014 passed in W.P(MD)No.2315 of 2014, the third Respondent issued a notice dated 14.02.2014 to the concerned persons to offer their explanation. The said notice came to be challenged by the Petitioner in O.S.No.98 of 2014, wherein I.A.No.191 of 2014 was filed for appointment of an Advocate Commissioner to inspect the subject property and file a report thereto. Indeed the Advocate Commissioner after visiting the property had filed a report stating that the Petitioner had encroached the land, which belongs to the Highways Department. When the said suit was pending on the file of the trial Court, the sixth Respondent (given up in the Writ Petition) had filed an impleading petition to implead himself in O.S.No.98 of 2014 and another application was filed to amend the cause-title of O.S.No.98 of 2014. The said suit was called on 12.01.2017 and the same was dismissed for default. The Petitioner has filed an Interim Application to restore the suit to file.

8. It transpires that according to the Petitioner, the given up sixth Respondent had approached this Court in W.P(MD)No.11686 of 2017 seeking to remove the building of the Petitioner as if he is an encroacher and this Court on 24.07.2017 was perforced to pass the following order:

"We direct the third respondent to consider and dispose of the representation submitted by the petitioner dated 27 May 2017, on merits as per law, after issuing notice to the fourth respondent, such exercise shall be completed within a period of three months from the date of receipt of a copy of this order."



9. At this juncture, the Learned Counsel for the Petitioner proceeds to point out that the fourth Respondent/Assistant Engineer(Projects), Highways Department, Division IV, Tichy, had issued the impugned notice dated 26.09.2017 to the Petitioner requiring him to remove the encroachment himself within 05.10.2017, failing which, they would remove the same. Further more, the Petitioner has sent a representation on 09.10.2017 to the Respondents.

10. At this stage, the Learned Special Government Pleader appearing for R-1 to R-5 brings it to the notice of this Court that for the impugned notice dated 26.09.2017 issued by the fourth Respondent, the Petitioner has furnished his reply dated 09.10.2017, wherein he had agreed to assist the Authority by way of participating in the conduct of enquiry and as such, when the Petitioner has subjected himself to the jurisdiction of the Authority concerned for conducting an enquiry, this Court may issue suitable direction to the fourth Respondent to conduct an enquiry in respect of the subjection matter of the impugned notice dated 26.09.2017 and to pass necessary orders on merits based on the explanation dated 09.10.2017 submitted by the Petitioner so as to give a complete quietus to the controversies surrounding the case.

11. In any event, the fourth Respondent is directed to pass necessary orders in the subject matter in issue within a period of three weeks from the date of receipt of a copy of this order. It is open to the Petitioner to submit all necessary documents and other connected records supporting his case before the fourth Respondent, who shall also take into account all the facts and legal pleas raised at the time of conduct of enquiry and pass necessary orders. Till such time, the fourth Respondent shall not take any coercive steps to evict the Petitioner from the subject matter of the property in question. Before parting with the case, this Court directs the Petitioner to lend his instinted co-operation and assistance to the fourth Respondent in completing the proceedings within the time adumbrated by this Court as stated supra.

12. With the above said observation(s) and direction(s), the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True copy/



To

1.The District Collector,
Trichy.

2.The Divisional Engineer,
Project Division,
State Highways Department,
Pon Nagar,
Trichy.

3.The Assistant Divisional Engineer,
(Highways Department),
Project Sub-Division II,
Trichy.

4.The Assistant Engineer (Projects),
Highways Department,
Division IV,
Trichy.

+1cc to Mr.A.N.RAMANATHAN,Advocate,SR.82818

W.P. (MD) No.19353 of 2017
12.10.2017

PM
KK/JC/SAR 1/25.10.2017/ 5P- 6C