



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE M. VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P. (MD) No. 20238 of 2017

and

W.M.P (MD) Nos. 16490 and 16491 of 2017

M/s. Kasim Hotels Private Limited,
Rep. by its Managing Director,
M. Kasim,
Law Ghat Road,
Kodaikanal,
Dindigul District.

: Petitioner

.vs.

1. The District Collector,
Dindigul District,
Dindigul.

2. The Assistant Divisional Engineer,
State Highways Department,
Law Ghats Road,
Kodaikanal,
Dindigul District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorari calling for the records relating to the impugned order made by the 2nd Respondent in his proceedings in Se. Mu. Ka. No. 45/2017/U dated 25.10.2017 and quash the same as illegal.

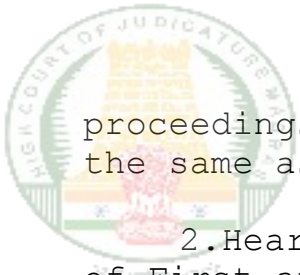
For Petitioner : Mr. M. Mahaboob Athiff for
M/s. Ajmal Associates

For R-1 & R-2 : Mr. T. R. Janarthanan,
Additional Government Pleader

O R D E R

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

The Petitioner has preferred the instant Writ Petition praying for quashing of an order by this Court in calling for the records relating to the impugned order made by the 2nd Respondent in his



proceedings in Se.Mu.Ka.No.45/2017/U dated 25.10.2017 and quash the same as illegal.

2. Heard both sides. No Counter-affidavit is filed on the side of First and Second Respondents.

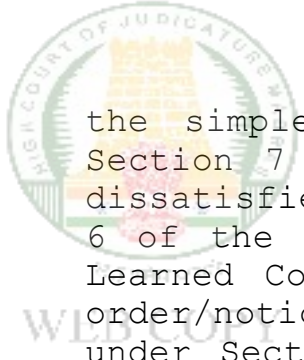
3. By consent, the main Writ Petition itself is taken up for final disposal.

4. The Petitioner has come out with the plea that the Subordinates of the Second Respondent made an endeavour to encroach into his patta land, claiming that the same is an extent of a part of the road vested in the Highways Department. Therefore, he had approached this Court in W.P(MD)No.18724 of 2013, seeking a Writ of Mandamus to forbear the Respondents from interfering with the Petitioner's 'Hotel Premises' without affording an opportunity of hearing. In the said Writ Petition, on behalf of the State, it was submitted that it was a routine survey and they had not concluded the Petitioner's land to be an encroachment. Accordingly, the said Writ Petition was closed on 02.12.2013.

5. At this juncture, the Learned Counsel for the Petitioner brings it to the notice of this Court that to the shock and surprise of the Petitioner, he had received the impugned order of eviction on 28.10.2017 dated 25.10.2017 passed by the Second Respondent, wherein it is among other things mentioned that a small portion of the Car Park is an encroachment in the road margin belonging to the Highways. Resultantly, the Petitioner was called upon to evict and to hand over the possession within 25 days, failing which, the Hotel Premises would be forcibly evicted at their costs.

6. The Learned Counsel for the Petitioner strenuously contends that the impugned order dated 25.10.2017 is per se illegal, because of the reason that in respect of proceedings for eviction of encroachment under the Tamil Nadu Land Encroachment Act, 1905, an action can be initiated only by the District Collector or the Thasildar and the Highways Authority. In substance, it is the submission of the Learned Counsel for the Petitioner that the Second Respondent/Assistant Divisional Engineer, State Highways Department, Kodaikanal, Dindigul District, has no jurisdiction to exercise the powers conferred under Section 6 and 7 of the Tamil Nadu Land Encroachment Act, 1905.

7. The Learned Counsel for the Petitioner takes a plea that even if it is assumed without admitting that the Second Respondent/Assistant Divisional Engineer, State Highways Department, Kodaikanal, Dindigul District, has jurisdiction, the impugned order/notice dated 25.10.2017, cannot be sustained for



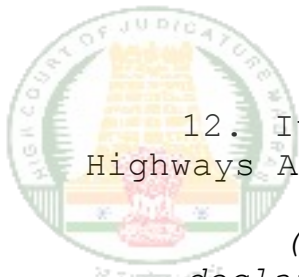
the simple reason that the Act of 1905, warrants issuance of Section 7 notice first, by way of show-cause and only on being dissatisfied with the explanation if any, the powers under Section 6 of the Act, can be invoked to order eviction. In fact, the Learned Counsel for the Petitioner points out that the impugned order/notice dated 25.10.2017, is a combination of one issued under Sections 6 and 7 of the Act, together and therefore, the impugned order in question is *Prima Facie* an illegal one and besides, the same does not sustain a scrutiny in the eye of Law.

8. The Learned Counsel for the Petitioner adds in his contentions that even if the road belongs to the State Highway has been encroached by the Petitioner, the same can only be removed by invoking the provisions of the Tamil Nadu State Highways Act, 2001, as the said Law is a Special Legislation and would prevail over the Tamil Nadu Land Encroachment Act, 1905, which is a General Legislation. That apart, it is projected on the side of the Petitioner that in regard to the ingredients of Sections 28 to 30 of the Tamil Nadu Highways Act, 2001, the same occupies the field in respect of removal of encroachment. In short, the stand of the Petitioner is that by no stretch of imagination, the ingredients of Tamil Nadu Land Encroachment Act, 1905, cannot be pressed into service by an Authority to remove the encroachment in question and consequently, the very invocation of the powers under the Tamil Nadu Land Encroachment Act, 1905, is unsustainable and bristles with legal infirmity.

9. By way of reply, the Learned Additional Government Pleader for the Respondents contends that the impugned order/notice dated 25.10.2017 of the Second Respondent addressed to 'Rubi Restaurent' (owned by the Petitioner/Hotels), can be treated as show-case notice enabling the Petitioner to furnish his explanation to the Second Respondent. Furthermore, after receipt of explanation/objections of the Petitioner, the Second Respondent shall pass orders on merits and in accordance with Law.

10. At this stage, this Court on going through the impugned notice/order dated 25.10.2017 of the Second Respondent, is of the considered view that the Second Respondent, in the last paragraph of the notice, had categorically mentioned that the encroachment will have to be removed within a period of 25 days and also it appears that the notice was issued under Sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905 etc. Failing removal of encroachment by the Petitioner, it was mentioned of in the said notice dated 25.10.2017 of the Second Respondent that with the aid of JCB Heavy Machine, the encroachment would be removed with the expenses incurred thereto.

11. Apart from that, it is fairly submitted on behalf of the Respondents that the subject land is a State Highway and as such, the Tamil Nadu Highways Act, 2001, shall apply.



12. It is to be noted that Section 2(12) of the Tamil Nadu Highways Act, 2001, defines as follows:

(12) "highway" means any road, way or land which is declared to be a highway under Section 3 and includes -

(a) all land appurtenant thereto, whether demarcated or not;

(b) the slope, berm, burrow pits, foot paths, pavement, whether surfaced or unsurfaced;

(c) all bridges, culverts, cause ways, carriageways or other structures built on or across such road or way;

(d) the foot-way attached to any road, public bridge or causeway;

(e) the drains attached to any such street, public bridge or causeway and the land, whether covered or not by any pavement, varanda or other structure, which lies on either side of the roadway upto the boundaries of the adjacent property, whether that property is private or property belonging to the Central Government or any State Government ; and

(f) all fences, trees, posts and boundaries, hectometre and kilometre stones and other highway accessories and materials stacked on such road or public bridge or causeway,

but does not include a National Highway declared as such by or under the National Highways Act, 1956 (Central Act 48 of 1956).

13. It cannot be forgotten that the term 'Highway' defined in Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002), does not include a National Highway declared in Section 2 of the National Highways Act, 1956 (Central Act 48 of 1956). Therefore, the National Highways of the Tamil Nadu State specified in the Schedule to the said Act, are not coming within the purview of the Tamil Nadu Highways Act, 2001.

14. Section 2(13) of the Tamil Nadu Highways Act, 2001, defines that 'Highway Authority' means the Officer appointed under sub-section (2) of Section 5. Undoubtedly, the Divisional Engineer of State Highways Department in-charge of each Division is the Highways Authority for that Division. For the purposes of Tamil Nadu Highways Act, 2001, the Tamil Nadu State Highways have been divided into numerous Divisions and there are quite number of Highways Authorities for the purpose of the Act in question.

15. Section 2(19) of the Tamil Nadu Highways Act, 2001, defines as follows:

(19) "occupier" includes -



(a) any person who for the time being is paying or is liable to pay to the owner, rent or any portion of the rent of the premises in respect of which such rent is paid or is payable ; or

(b) a owner living in or otherwise using his premises; or

(c) a rent free tenant; or

(d) a licensee in occupation of any premises; or

(e) any person who is liable to pay to the owner damages for the use and occupation of any premises;

16.. Section 2(20) of the Tamil Nadu Highways Act, 2001, defines the 'owner' as under:

(20) "owner" includes -

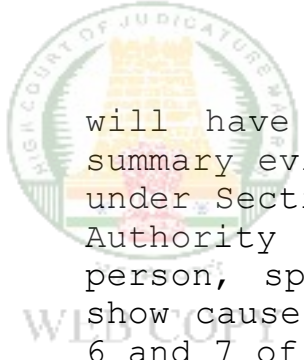
(a) any person for the time being receiving or entitled to receive, whether on his own account or as agent trustee, guardian, manager or receiver for another person or other purpose, the rent or profits of any land or building; and

(b) the person for the time being in-charge of any land or building or part of the same;

17. It comes to be known that the Chief Engineer (General), Tamil Nadu State Highways Department, is the State Highways Authority for the purpose of the Tamil Nadu Highways Act, 2001, vide G.O.Ms.No.206, Highways (HN2) Department, dated 27th November, 2002.

18. As per Section 6 of the Tamil Nadu Highways Act, 2001, it is the responsibility of the Chief Engineer (General), Tamil Nadu State Highways Department, who is the State Highways Authority for the overall supervision of the construction, maintenance, development or improvement of the State Highways in the State and for the restriction of ribbon development along with Highways as mentioned in Chapter III. Moreover, he is enjoined to issue necessary instructions to the Divisional Engineers (Highway Authorities) of Highways Department in-charge of each Division for carrying out the purposes of the Act.

19. In this connection, it is not out of place for this Court to make a pertinent mention that the impugned notice dated 25.10.2017 issued by the Second Respondent, bristles with legal infirmity inasmuch as the said notice refers to Sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905. Indeed, firstly, if the said 1905 Act, is to be pressed into service, then under Section 7 of the Act, prior notice to the person in occupation



will have to be given by the Authorities concerned. For a summary eviction of an unauthorised occupation of Government Land, under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, the Authority concerned shall cause a notice to be served on the person, specifying the land so occupied and calling upon him to show cause as to why he should not be proceeded against Sections 6 and 7 of the Act.

20. Ordinarily, the forcible eviction by the concerned Revenue Authorities without adhering to the legal requirements of Sections 6 and 7 of the Tamil Nadu Land Encroachment Act, 1905 and demolition of premises, cannot be accepted and it is also not valid in the eye of Law.

21. Be that as it may, as far as the present case is concerned, the Respondents have come out with a fair plea that the Tamil Nadu Highways Act, 2001, is squarely applicable to the case of the Petitioner. As such, it is the contention of the Respondents that a fresh notice will be issued under the Relevant Section (Sections) of the Tamil Nadu Highways Act, 2001 and necessary follow up action would be taken by the concerned Authorities.

22. Considering the fact that the Tamil Nadu Highways Act, 2001, is quite applicable to the Petitioner, this Court quashes the impugned notice/order dated 25.10.2017 issued by the Second Respondent under Sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905 and directs the Second Respondent to issue a fresh show-cause notice to the Petitioner by strictly adhering to the relevant provisions of the Tamil Nadu Highways Act, 200. After issuance of such show-cause notice to the Petitioner specifying the time limit of seven days as per Section 28(2) of the Tamil Nadu Highways Act, 2001, the Petitioner shall submit his Remarks/Objections. Thereafter the concerned Authority viz., the Second Respondent herein shall pass necessary orders within a period of four weeks thereafter, of course, on merits after adhering to the principles of natural justice, in accordance with Law.

23. It is open to the Petitioner to raise all factual and legal pleas before the concerned Authority, who shall take note of the same and also advert to the same, thereby meeting out all the factual and legal points raised by the Petitioner and to arrive at a decision in the subject matter in issue by applying his thinking judicial mind in a Fair, Free, Just, Impartial, Unbiased and Dispassionate manner. It is open to the Second respondent to issue notice to the Authorities concerned also if need be and if situation so warrants.



24. In the result, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (AE)

/True Copy/

Sub-Assistant Registrar

To

1.The District Collector,
Dindigul District,
Dindigul.

2.The Assistant Divisional Engineer,
State Highways Department,
Law Ghats Road,
Kodaikanal,
Dindigul District.

+One cc to M/s.Mahaboob Athiff for M/s.Ajmal Associates,
Advocate, SR.No.85142

+One cc to The Special Government Pleader, SR.No.85166

pm
RL/5C/7P/JC/SAR1/14/11/2017

ORDER MADE IN

W.P. (MD) No.20238 of 2017

02.11.2017