



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

AND

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD) No.21250 of 2017

and

W.M.P (MD) Nos.17523 to 17525 of 2017

Dr.A.Bladbin,
Jerush Dental & Facial Corrective Centre,
Main Road, Near Bus Stand,
Thuckalay - 629 175,
Kanyakumari District.

: Petitioner

.vs.

1. The District Collector,
Kanyakumari District.
2. The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.
3. The Superintending Engineer,
Office of the Superintending Engineer,
National Highways, Palayamkottai,
Tirunelveli -2.
4. The Divisional Engineer,
National Highways, Thuckalay,
Kanyakumari District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorarified Mandamus, calling for the records in the impugned notice dated 24.10.2017 passed by the Fourth Respondent in Ka.No.25/2017/E.Va.A and quash the same and consequently direct the Respondents not to take any action in his property in Survey No.B8/106/3A at Door No.13/1A, Thuckalay Village, Kalkulam Taluk, Kanyakumari District.

For Petitioner : Mr.F.Deepak,

For Respondents : Mr.M.Govindan,
Special 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 passing of an order by this Court in calling for the records in the impugned notice dated 24.10.2017 passed by the Fourth Respondent in Ka.No.25/2017/E.Va.A and quash the same and consequently direct the Respondents not to take any action in his property in Survey No.B8/106/3A at Door No.13/1A, Thuckalay Village, Kalkulam Taluk, Kanyakumari District.

2.Heard both sides. No counter-affidavit is filed on behalf of the Respondents.

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

4.The Petitioner is a Doctor by profession and he had specialized in Oral & Maxillo Facial Surgeon and he is running a Hospital by name 'Jerush Dental & Facial Corrective Centre' at Thuckalay, for the past 15 years and it is a well established and renowned Hospital in Kanyakumari District and one of the best Hospitals in Oral & Maxillo Facial Surgery in South India. The Hospital is situated in Survey No.B8/106/3A measuring an extent of 1 cent and 440 sq. ft. at Thuckalay Village.

5. The version of the Petitioner is that under the guise of removal of encroachment, the Respondents had measured his property in the afore stated survey number and are fixing boundaries for removal of encroachment into his patta land ie., in Survey No.B8/106/3A measuring an extent of 1 cent and 440 sq. ft. The afore stated land belongs to one Umayaparvathi and Parameswarapillai. Subsequently, by virtue of a sale in the year 1996, it was transferred to one Jeyapaul under Document Nos.631/1996 and 632/1996 and from the said Jeyapaul, the Petitioner had purchased the aforesaid property through a sale deed registered vide Document No.1578/2006. Subsequently, he is in full enjoyment of the property by transferring patta and other Revenue Records in his name. He had also constructed a Dental Clinic in the afore stated property based on the approval granted on 03.11.2006 by Padmanabapuram Municipality and till today, he is running the said Clinic. The door number assigned by the Municipality is 13/1A for the building that was constructed.

6. The prime contention advanced on behalf of the Petitioner is that the Petitioner has a clear title on his property and all the Revenue Records will point out to the effect that there are no encroachments in regard to his property in Survey No.B8/106/3A at Door No.13/1A, Thuckalay Village, Kalkulam Taluk, Kanyakumari District etc.



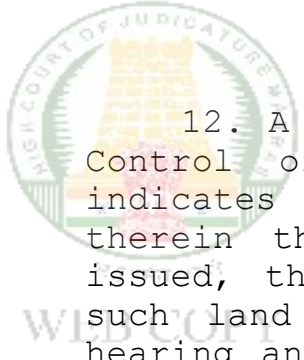
7. At this stage, the Learned Counsel for the Petitioner brings it to the notice of this Court that the Respondents without any authority of Law, had informed him that they would demolish the building structure on the basis of removal of encroachment without issuing any proper legal notice. Also that, the Respondents had without the Petitioner's permission, had measured the land on their own and are taking steps to demolish the building constructed in Survey No.B8/106/3A at Door No.13/1A, Thuckalay Village, Kalkulam Taluk, Kanyakumari District, without assessing or verifying the petitioner's property.

8. The Learned Counsel for the Petitioner vehemently contends that the Fourth Respondent had caused a notice for removal of encroachments made Survey No.B2/36 at Kalkulam Taluk, measuring an extent of 0.01.8 hectare, which is impermissible in Law. The categorical case of the Petitioner is that he has title over the property based on Revenue Records and his property is in Survey No.B8/106/3A at Door No.13/1A, Thuckalay Village, Kalkulam Taluk, Kanyakumari District. Since the Respondents have no authority to remove any portion of the land in Survey No.B8/106/3A at Door No.13/1A, Thuckalay village, Kalkulam Taluk, Kanyakumari District, the Petitioner has filed the present Writ Petition.

9. The Learned Special Government Pleader for the Respondents 1 to 4 brings it to the notice of this Court that no doubt, Survey No.B8/106/3A at Door No.13/1A at Thuckalay Village, Kalkulam Taluk, Kanyakumari District, is owned by the Petitioner. But, in Survey No.B2/36, there is an encroachment in National Highways.

10. The Learned Counsel for the Petitioner contends that the impugned notice dated 24.10.2017 of the Fourth Respondent was issued to the Petitioner without providing any requisite opportunity to him to put forward his case by way of a show-cause and straight away, the impugned order/notice requires the Petitioner to be evicted from the property in question viz., Survey No.B2/36 belonging to the National Highways and also that, the Petitioner was informed that if the encroachments are not removed by him, then, the Fourth Respondent would take necessary action for removal of encroachment.

11. It comes to the fore that the Petitioner had submitted a representation before the Respondents 3 and 4 for the impugned order/notice dated 24.10.2017 issued by the Fourth Respondent setting out his claim. The matter is still under consideration of Respondent Nos.3 and 4 and no final orders have been passed either by the Third Respondent or the Fourth Respondent in the



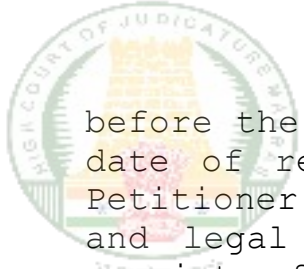
12. A mere perusal of the ingredients of Section 26(3) of the Control of National Highways (Land and Traffic) Act, 2002, indicates that the notice under Sub-Section 2, shall specify therein the highway land in respect of which such notice is issued, the period within which the unauthorised occupation on such land is required to be removed, the place and time of hearing any representation, if any, which the person to whom the notice is addressed may make within the time specified etc.

13. Section 26(6) of the Act, 2002, enjoins that if the unauthorised occupation has not been removed within the time specified in the notice for such purpose and if no reasonable cause has been shown before the Highway Administration in this regard for not so removing the unauthorised occupation, the Highway Administration or such Officer, as the case may be, shall cause such unauthorised occupation to be removed at the expenses of the Central Government or the State Government, as the case may be and impose penalty on the person to whom the notice is addressed which shall be five hundred rupees per square metre of the land so unauthorisedly occupied and where the penalty so imposed is less than the cost of such land, the penalty may be extended equal to such cost.

14. On behalf of the Respondents, it is represented before this Court that the Respondents/Authorities would follow the requirement of Section 26(3) and (6) of the Control of National Highways (Land & Traffic) Act, 2002, in true letter and spirit.

15. Considering the fact that the Fourth Respondent's order/impugned notice dated 24.10.2017 addressed to the Petitioner straightaway requires the Petitioner to remove the encroachment within fifteen days from the date of receipt of notice and also, the said notice in the preamble portion points out that in Survey No.B2/36 at National Highways - 47, in Padmanabapuram Village, Kalkulam Taluk, the Petitioner had constructed a Dental Hospital in the land measuring an extent of 0.01.08 hectare and further, the Petitioner was informed that if he fails to remove the encroachment, the notice would be treated as final notice and further steps would be taken for removal of encroachment.

16. Considering the fact that the Fourth Respondent's order/impugned notice dated 24.10.2017 was issued to the Petitioner without adhering to the principles of natural justice and also not receiving any representation from the Petitioner and also a Deeper scrutiny of the notice dated 24.10.2017 issued by the Fourth Respondent indicates in a crystalline fashion that it had not mentioned the place and time of hearing of any Representation etc., at this stage, this Court, simpliciter, directs the Petitioner to treat the impugned order/notice of the Fourth Respondent as show-cause notice and directs the Petitioner to submit his explanation in a detailed and qualitative fashion



before the Fourth Respondent within a period of two weeks from the date of receipt of a copy of this order. It is open to the Petitioner to produce necessary documents and to raise all factual and legal pleas before the Fourth Respondent. Soon after the receipt of Representation/Objection/Remarks from the Petitioner, within the time determined by this Court as stated supra, the Fourth Respondent is directed to pass a reasoned order on merits, to have an substantial cause of justice being to the parties concerned, in any event, within a period of four weeks thereafter. It is open to the Fourth Respondent to issue notice to the Petitioner and others concerned, if need be/if situation so warrants considering the facts and circumstances of the case. Till the final orders are passed by the Fourth Respondent, it is abundantly made quite clear that the possession of the Petitioner from the subject land in issue, shall not be disturbed by anyone in any manner whatsoever.

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

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Kanyakumari District.
2. The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.
3. The Superintending Engineer,
Office of the Superintending Engineer,
National Highways, Palayamkottai,
Tirunelveli -2.
4. The Divisional Engineer,
National Highways, Thuckalay,
Kanyakumari District.

+1cc to Mr.F.Deepak, Advocate Sr.No.87997
+1cc to Spl.Government Pleader Sr.No.88197
PM

VB/MR/KKR/SAR3/08/12/2017/5P/7C