



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.BASKARAN

W.P. (MD) No.21300 of 2017

L.P.Arumugasamy : Petitioner

-Vs-

1. The District Collector,
Virudhunagar District,
Virudhunagar.
2. The National Highways Authority of India,
Madurai Zone, Madurai.
3. The Deputy General Manager -cum-
Project Director,
Plot No.3, Suriya Towers, II Floor,
1st East Street, K.K.Nagar,
Madurai-625 200.

4. P.Manoj Kumar : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the Respondents 1 to 3 to remove the encroachment made by the fourth Respondent in National Highways (Service Road) in front of the buildings of the Petitioner in Door No.61, Bye Pass Road, near Padanthal Road Junction in Sattur in Virudhunagar District.

For Petitioner	: Mrs.S.Mahalakshmi
For Respondent No.1	: Mr.T.R.Janarthanan, Additional Government Pleader
For Respondents 2&3	: Mr.C.Arul Vadivel @ Sekar

O R D E R

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

Heard the Learned Counsel for the Petitioner, the Learned Additional Government Pleader for the first Respondent and the Learned Standing Counsel appearing for the second and third



Respondents.

2. No counter is filed on behalf of the Respondents 1 to 3.

3. To avoid an avoidable delay, notice to the fourth Respondent is dispensed with.

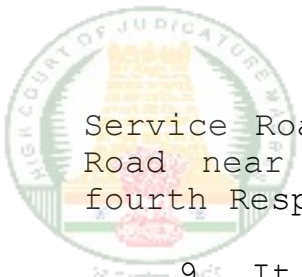
4. By consent, the main Writ Petition itself is taken up for final disposal at the admission stage.

5. According to the Petitioner, he is owning a house and residing therein at Door No.61, Bye Pass Road, Sattur, Virudhunagar District, which lies just abutting the N.H.7 on East. A portion of a land in front of his house was acquired by the National Highways for the purpose of laying four-lining. His house is situated at North - East corner of a Junction Point and the two State Highway Roads leading to Sattur Town and Padanthal Village join with the N.H.7. The said Junction Point is highly trafficked and vulnerable to vehicular accidents.

6. The grievance of the Petitioner is that the fourth Respondent had encroached upon the Service Road appurtenant to the National Highways - 7 in the corner of the said Junction Point and in front of his house premises, in the month of November, 2016, by putting up a thatched shed and a tin sheeted bunk measuring about 10 x 7 feet, tea, coffee, cigarettes and snacks, etc., are sold in an unhygienic manner. Further, he is using the gas stove also for preparing tea and coffee without any safety measures. That apart, the fourth Respondent had not obtained due licence from the Sattur Municipality for running the tea shop and selling eatables in public platform.

7. It appears that the By-passers are gathering in front of the bunk shop of the fourth Respondent and smoking openly, in spite of the prohibition of smoking in public place. The encroachment made by the fourth Respondent causes obstruction to free flow of traffic in the Service Road and causes more nuisance to the public and to his residence. The said bunk tea shop under the banner of 'Aavin Milk' is functioning from 06.00 a.m., to 10.00 p.m.

8. The Learned Counsel for the Petitioner points out that Section 5 of the National Highways Act, 1956 mandates the Central Government to develop and maintain the National Highways and, therefore, the Respondents 1 to 3 are responsible for the proper maintenance of the National Highways without any encroachment. The Respondents 1 to 3, in spite of the representations made to them, till date, have not removed the complained encroachments. In fact, the son of the Petitioner had sent a representation to the second Respondent on 23.11.2016, who, in turn, forwarded the same to the third Respondent and on 09.10.2017, the Petitioner had addressed a representation to the three Respondents, whereby and whereunder, a request was made for removal of unlawful encroachment made in the



Service Road appurtenant to National Highways -7 in Sattur By-Pass Road near Padanthal Junction by one P.Manoj Kumar, Sattur (the fourth Respondent in the Writ Petition).

9. It comes to be known that the second Respondent/National Highways Authority of India, Madurai, in Ref.:NHAI/MDU/NH-7/Encroachment/2017/2550, dated 10.10.2017 had addressed a communication to one M.Muthukrishnan, B.E., Government Engineering Contractor, No.61, Post Office Street, North Vijayanarayanam, Tirunelveli, whereby and whereunder, the Petition of the Petitioner dated 09.10.2017 was transmitted for taking action at the Contractor's end. In spite of the same, necessary action has not been taken by the authorities concerned. Hence, the Petitioner is performed to file the present Writ Petition.

10. In this connection, it may not be out of place for this Court to make a pertinent mention that Section 5 speaks of responsibility for development and maintenance of National Highways, which runs as under:

"Responsibility for development and maintenance of national highways.- It shall be the responsibility of the Central Government to develop and maintain in proper repair all national highways; but the Central Government may, by notification in the Official Gazette, direct that any function in relation to the development or maintenance of any national highway shall, subject to such conditions, if any, as may be specified in the notification, also be exercisable by the Government of the State within which the national highway is situated or by any officer or authority subordinate to the Central Government or to the State Government."

11. Section 6 of the National Highways Act, 1956, enjoins 'power to issue directions', in and by which, the Central Government may issue necessary directions to the Government of any State as to the carrying out in the State of any of the provisions of this Act or of any rule, notification or order made thereunder.

12. Apart from the above, Section 8-B refers to punishment for mischief by injury to national highway.

13. A mere perusal of the National Highways Act, 1956, points out that the said Act does not, in any manner, deal with erection/re-erection of buildings, etc., on the two sides of the National Highway nor does it provide for restrictions on the construction of building, etc., on the two sides of the National Highways. It does not even regulate the construction of the buildings, etc., or the use of lands on both sides of the National

14. The Definition Section of 3 (a) and 3(b) of the National



Highways Act, 1956, read as under:

"3. Definitions.- In this Act, unless the context otherwise requires,-

(a) "competent authority" means any person or authority authorised by the Central Government, by notification in the Official Gazette, to perform the functions of the competent authority for such area as may be specified in the notification;

(b) "land" includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth."

15. Be that as it may, in view of the fact that the Petitioner's son's representation dated 23.11.2016 addressed to the third Respondent is pending as on date and also, considering the yet another primordial fact that another representation of the Petitioner dated 09.10.2017 addressed to the Respondents is pending for consideration, at this stage, this Court, without expressing any opinion on the merits of the subject matter in issue and also not delving deep into the contents of the two representations dated 23.11.2016 and 09.10.2017, simpliciter, directs the third Respondent to look into the representation of the Petitioner's son dated 23.11.2016 and another representation of the Petitioner dated 09.10.2017, with all seriousness and earnestness, within a period of two weeks from the date of receipt of copy of this order and if any substance is found in the said representations, without any haziness or hesitation, the third Respondent is directed to take necessary steps in the manner known to law and in accordance with law, for removal of encroachment. It cannot be gainsaid that the third Respondent shall provide enough opportunity of hearing to the fourth Respondent and others concerned, if any, receive his/their objections and then, pass a speaking order on merits in qualitative and quantitative terms assigning necessary reasons thereto, within a period of two weeks thereafter. It is open to the Petitioner to raise all factual and legal pleas before the third Respondent and at the time of passing final orders on the two aforesaid representations, the third Respondent shall advert to the each and every point raised by the Petitioner and answer the same, so that, the final order to be passed in the subject matter in issue will have 'an appearance of justice'.

16. With the aforesaid observation(s)/direction(s), the Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/



To

1. The District Collector,
Virudhunagar District,
Virudhunagar.

2. The National Highways Authority of India,
Madurai Zone, Madurai.

3. The Deputy General Manager -cum-
Project Director,
Plot No.3, Suriya Towers, II Floor,
1st East Street, K.K.Nagar,
Madurai-625 200.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 88496

+ 1 CC TO Mr.P.SANTHOSH KUMAR, ADVOCATE IN SR No. 88068

SML

TE/KP/SAR-2 : 24/11/2017 : 5P/6C

Order made in
W.P.(MD)No.21300 of 2017
Dated: 20.11.2017