



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MRS.JUSTICE R.THARANI**

W.P.(MD)No.23389 of 2017
and
W.M.P(MD)No.19658 of 2017

M.Aadaikkan

: Petitioner

.vs.

The Assistant Divisional Engineer,
(Construction and Maintenance),
State Highways,
Melur, Madurai District.

: Respondent

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 passed by the Respondent in his proceedings in Memo No.7-6/2017/A1/Thakeethu/dated 14.12.2017 and to quash the same as illegal and arbitrary.

For Petitioner : M/s.B.Saravanan
For Respondent : Mr.M.Govindan
Sp.1 Govt.Pleader

O R D E R

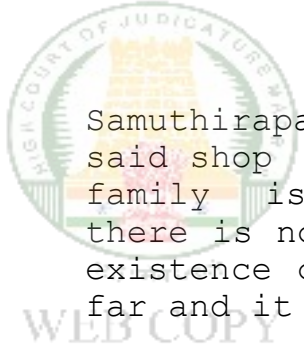
[Order of the Court was made by M.VENUGOPAL, J.]

This Writ Petition has been filed seeking issuance of a Writ of Certiorari calling for the records relating to the impugned order passed by the Respondent in his proceedings in Memo No.7-6/2017/A1/Thakeethu/dated 14.12.2017 and to quash the same as illegal and arbitrary.

2.Heard both sides. No counter is filed on behalf of the respondent.

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

4. According to the Petitioner, he is a resident of Arukkanpatti Village, Melur Taluk, Madurai District. He had set up a Tea shop 49 years ago at the side of the State Highways road between Melur-



Samuthirapatti and Sekkipatti at Kesampatti Revenue Village. The said shop is the only source to eke out his livelihood. His entire family is dependant upon the revenue from the Barber shop and there is no other source for his family. The said shop which is in existence on the side of the State Highways for about 49 years so far and it has not caused any hindrance to the vehicular traffic.

5. When that be the facts situation, all of a sudden, the Respondent had issued the impugned proceedings, dated 30.09.2013, wherein, it was mentioned that he was running a tea stall on the Highways poramboke land and therefore he was to remove the encroachment within a period of seven days from the date of receipt of the order namely, on or before 09.10.2013.

6. The Learned Counsel for the Petitioner submits that aggrieved against the order of the Respondent, dated 30.09.2013, the Petitioner filed a Writ Petition in W.P(MD)No.16646 of 2013 on earlier occasion and this Court was pleased to pass final orders in the said Writ Petition, with a direction to the Petitioner to offer his explanation for the notice, dated 30.09.2013 within a period of thirty days and on submission of such explanation, the Respondent was directed to consider the same and pass appropriate orders in accordance with the provisions of the Tamil Nadu Highways Act, 2001. As such, the Petitioner submitted his explanation, dated 11.10.2013 by Speed Post and so far, no orders were passed on his explanation, as directed by this Court.

7. At this juncture, the Learned Counsel for the Petitioner brings it to the notice of this Court that one K.Mani filed a Writ Petition in W.P(MD)No.20300 of 2013, praying this Court for issuance of a direction to the Respondent herein to remove the encroachment caused by four Respondents (including the Petitioner) blocking the entry to his property on the eastern side situated in S.No.62/7B covered by Patta No.3265, Kesavampatti Village, Melur Taluk, Madurai district and this Court was pleased to direct the Respondent to consider and dispose of the representation of the said K.Mani on merits, after issuing notice to the Respondents in the said Writ Petition.

8. It comes to be known that the Respondent had passed an order subsequently on 2.11.2017, wherein, it was mentioned that the said order was passed pursuant to the order passed in W.P(MD)No.20300 of 2013, dated 6.7.2017 and as per the provisions of Section 28(ii) of the State Highways Act, 2001, for removal of encroachment purported to have been caused upon the State Highways land as mentioned in the Tabular Column and further, the Petitioner was directed to remove the same within a period of seven days etc.

9. Aggrieved against the said order, dated 2.11.2017, the Petitioner projected a Writ Petition in W.P(MD)No.20488 of 2017 before this Court and this Court was pleased to pass an order in the aforesaid Writ Petition on 7.11.2017 directing the petitioner to



submit his explanation before the Respondent within a period of two weeks from the date of receipt of a copy of the order and further, the Respondent was directed to look into the representations/objections submitted by the Petitioner and to pass necessary speaking orders on merits, after providing necessary opportunity etc.

10.It transpires that the Petitioner made a detailed representation, dated 25.11.2017 to the Respondent specifically raising a plea that he is running a Tea Shop for the past 49 years on the side of the State Highways between Melur-Samuthirapatti and Sekkipatti at Kesampatti Revenue Village and that the Tea Shop is the only source of livelihood for the Petitioner's family and same has not caused any hindrance to the Vehicular traffic.

11.The Learned Counsel for the Petitioner contends that as per Section 26 of the Tamil Nadu Highways Act, 2001, 'the State Highways Authority with the concurrence of the Collector and with due regard to the safety and convenience of traffic and subject to such conditions and on payment of rent or other charges, as may be prescribed, grant of permission of a temporary nature to any person to make any temporary use of the Highway to put up a temporary tent or similar structures or temporary stall on any Highway'.

12.Expatiating his submission, the Learned Counsel for the petitioner points out that the Petitioner in his representation, dated 25.11.2017 had stated that there is no proposal from the State Highways Authority to extend the aforementioned road and hence there was no immediate requirement for removal of the shop from the said land. Also that, there are about 10 shops in the aforementioned place and whereas, the show-cause notice was issued only to three shops and for the remaining shops, no proceedings were initiated for removal of encroachment and this fact would clearly points out that the land is not required for the Highways Department and there is no proposal for expansion, at present.

13.The Learned Counsel for the Petitioner proceeds to state that in the representation, dated 25.11.2017 of the Petitioner, it was mentioned that the land owner on the rear side of the Petitioner's aforesaid shop wants to have access from the front side of the road and hence, only in order to enable him to have access from the front side of the road, entire removal of encroachment proceedings was initiated by the State Highways Authority. Furthermore, the land on the rear side land has a separate way to have access to his land and only to give benefit to his land and to improve the land value, the petitioner has sought for removal from the above said land. Apart from that, the petitioner had expressed his willingness to pay rent or charges fixed by the Highways Department for his occupation in the said land.

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

14.The Petitioner had appeared before the Respondent on



14.12.2017 and explained about facts of the case and also informed the Respondent that in the said temporary structures, he is running a Tea Shop. It appears that the Petitioner's representation was rejected on the ground that the land belongs to the Highways Department and that the Petitioner was unable to produce any document claiming ownership of the land. Further, he was directed to remove the encroachment on or before 20.12.2017.

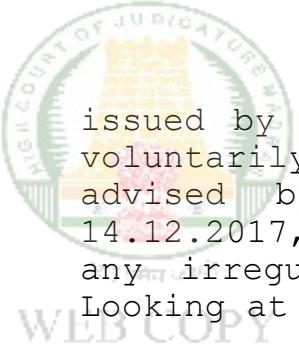
15. Per contra, it is the submission of the Learned Special Government Pleader appearing for the Respondent that it is the duty of the Respondent to protect the public property. Further, the Petitioner had not furnished any documents to show that the land in question belongs to him and in fact, in the impugned order, dated 14.12.2017, it was affirmed that the land belongs to Highways Department and as such, final notice was issued to the Petitioner whereby and where-under, he was directed to remove the encroachment by himself etc.

16. It is to be noted that Section 26 of the Tamil Nadu Highways Act, 2001 speaks of 'Prevention of Un-authorised Occupation of Highway'. Sub-section (2) of Section 26 of the 'Act', 2001, pertains to 'grant of permission to use the Highways land'. In fact, the conditions subjected to which permission may be given under Sub-section (2) of Section 26 have been prescribed in Rule 7 of the Tamil Nadu State Highways Rules, 2003. If permission is granted by the Highways Department under Section 26(2), the same shall be in Form-A.

17. Section 27 of the 'Act', 2001, under the caption 'power to cancel permission' enjoins the Highways Department to annul the permission granted for use of Highway land for the breach of conditions of permission. No such cancellation is to be ordered without issuance of legal notice to the permit holder is not entitled to any amount in respect of such cancellation or to the refund of any rent or charge paid by him in advance. Section 38 of the 'Act' deals with 'Prevention of encroachment'. Section 29 of the 'Act' concerns with 'Recovery of cost of removal of encroachment'. Section 30 of the 'Act', 2001 refers to 'Restoration of property to original State where it is dealt with in contravention of Section 9'.

18. As far as the present case is concerned, admittedly, the Petitioner had not produced any documents to exhibit that the land in question belongs to him and does not belong to the Highways Department. Per contra, the impugned notice points out that since the Petitioner had not produced necessary documents in respect of the encroached land to show that it belongs to him, the aforesaid land in question was affirmed to say that it belongs to the Highways Department.

19. Further, inasmuch as the Petitioner is found to be an encroacher, the Petitioner by means of Memorandum, dated 14.12.2017



issued by the Respondent, was directed to remove the encroachment voluntarily by himself before 20.12.2017 and in this regard, he was advised by the Respondent. The said impugned order, dated 14.12.2017, on a deeper scrutiny of the same, does not suffer from any irregularities or patent illegalities, in the eye of Law. Looking at from that angle, the present Writ petition sans merits.

20. In view of the fore-goings, the present Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

21. Before parting with the case, it is abundantly made clear by this Court that the dismissal of the present Writ Petition will not preclude the Petitioner to make a fresh representation before the District Collector, Madurai and to seek for an alternative accommodation within a period of two weeks from the date of receipt of a copy of this order. On such representation being made, the District Collector, Madurai, shall consider the same sympathetically and on humane consideration.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

The Assistant Divisional Engineer,
(Construction and Maintenance),
State Highways,
Melur, Madurai District.

Copy to

The District Collector, Madurai.

for favour of information and for follow up action.

+ 1 CC TO Mr.B.SARAVANAN, ADVOCATE IN SR No. 94072
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 94329

VSN

TE/MR/SAR-1 : 08/01/2018 : 5P/5C

ORDER MADE IN
W.P. (MD) No. 23389 of 2017 and
W.M.P (MD) No. 19658 of 2017
20.12.2017

(3/3)