



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2017

CORAM:

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

**W.P. (MD) No.23594 of 2017  
and  
W.M.P. (MD) No.19854 of 2017**

C.Ganesan

: Petitioner

Vs.

1. The District Collector,  
Sivagangai District,  
Sivagangai.
2. The District Revenue Officer,  
Sivagangai,  
Sivagangai District.
3. The Tahsildar,  
Karaikudi Taluk,  
Sivagangai District.
4. The Assistant Divisional Engineer,  
Highways Department (Ka) (Ma) (Pa),  
Karaikudi,  
Sivagangai District.

5.C.Muthan

: Respondents

**PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the fourth Respondent herein in his proceedings No.564/2017/EVaA/dated 14.12.2017 and quash the same and consequently, direct the Respondents 1 and 3 herein to issue patta to the Petitioner.

For Petitioner : Mr.K.Hemakarthiskeyan

For Respondents 1to4 : Mr.T.R.Janarthanan,  
Additional Government Pleader

**O R D E R**

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

The Petitioner has come forward with the present Writ Petition seeking for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the fourth Respondent herein in his proceedings No.564/2017/EVaA/dated 14.12.2017, quash the same and consequently, direct the Respondents 1 and 3 herein to issue patta to the Petitioner.

2. Heard the Learned Counsel for the Petitioner and the Learned Additional Government Pleader appearing for the Respondents 1 to 4.

3. To avoid an avoidable delay, issuance of notice to the fifth Respondent is dispensed with, in the interest of justice.

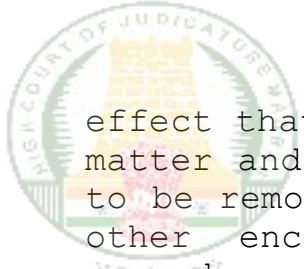
4. No counter is filed on behalf of the Respondents 1 to 4.

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

6. The Petitioner was issued with the impugned order/notice dated 14.12.2017 by the fourth Respondent requiring him to remove the encroachment by himself before 20.12.2017, failing which, he was further informed that the encroachment in question would be removed as per Section 29(1) of the Tamil Nadu Highways Act, 2001 and expenses incurred thereto shall be recovered from him.

7. At this stage, a cursory perusal of the contents of the affidavit of the Petitioner in the present Writ Petition shows that the Petitioner had filed a Suit in O.S.No.47 of 2013 on the file of Learned Additional District Munsif, Karaikudi, against the Respondents 1 and 3 herein, seeking a relief of bare injunction restraining them from evicting him from the suit property without following due process of law. In the said Suit, the third Respondent herein took a plea in the written statement that the suit property in question is a 'Government Land' and ultimately, prayed for dismissal of the Suit. In the said Suit, a Decree came to be passed on 21.11.2016 to the effect that the Writ Petitioner (Plaintiff) was not to be evicted from the suit property except by due process of law and accordingly, a permanent injunction was granted in his favour. In the said Suit, the Tahsildar, Karaikudi and the Government of Tamil Nadu, represented by the District Collector, Sivagangai District were arrayed as Defendants 1 and 2.

8. In the instant case, a plea is taken on behalf of the Petitioner that the fifth Respondent (C.Muthan) had filed a Writ Petition (MD) No.16138 of 2017 before this Court, on earlier occasion, wherein an order came to be passed on 12.09.2017 to the



effect that the fourth Respondent was directed to enquire into the matter and if any encroachment was noticed, the same was directed to be removed after notice to the Respondents 6 and 7 therein and other encroachers, if any, and by following the statutory procedure and the entire exercise was directed to be completed, within a period of three months from the date of receipt of copy of the order.

9. The grievance of the Petitioner is that the Petitioner had narrated in a detailed fashion in his explanation on 06.12.2017 about the necessary facts and also made a reference to the Decree in O.S.No.47 of 2013 obtained by him and in fact, according to the Petitioner, in the civil Suit, as stated *supra*, the third Respondent had admitted that the suit property is a Government land and, therefore, the fourth Respondent has no right to issue the present impugned order/notice dated 14.12.2017, which is *per se* an illegal one.

10. It comes to be known that the Trial Court in O.S.No.47 of 2013, while answering the second issue, viz., whether the averment that the suit property belongs to Government is a correct one?, had observed that P.W.1, in his evidence, had deposed that he only claimed an enjoyment right in the suit property and that he had not claimed any ownership/title of the property. Further, P.W.2, in his cross-examination, categorically deposed that the superstructure only belonged to the Plaintiff (Writ Petitioner) and that the land belongs to the Government. As such, the Trial Court came to the conclusion that the averment that the suit property belongs to the Government is a correct one and finally, granted the relief of permanent injunction, viz., that the Plaintiff shall not be evicted except by due process of law.

11. In the instant case on hand, on perusal of the impugned notice/order dated 14.12.2017 issued to the Petitioner by the fourth Respondent, this Court is of the considered opinion that the said impugned order/final notice does not suffer from any material irregularity or patent illegality in the eye of Law and only based on the order in W.P.(MD)No.16138 of 2017, dated 12.09.2017, the fourth Respondent had initiated action and in fact, the fourth Respondent had not acted by himself in a voluntary fashion. As a matter of fact, the explanation of the Petitioner dated 06.12.2017 was considered and rejected by the fourth Respondent. Although the fourth Respondent had not assigned any qualitative or quantitative reason for rejecting the explanation of the Petitioner, yet the fourth Respondent, in the impugned order/notice dated 14.12.2017, had stated that the encroachment made by the Petitioner was affirmed and he was directed to remove the encroachment before 20.12.2017 voluntarily or by force. <https://hcservices.com.sg/fin/hcservices/> Looking at from any angle, the Writ Petition is devoid of merits.



12. In fine, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/True Copy/

Sub Assistant Registrar

To

1. The District Collector,  
Sivagangai District,  
Sivagangai.
2. The District Revenue Officer,  
Sivagangai,  
Sivagangai District.
3. The Tahsildar,  
Karaikudi Taluk,  
Sivagangai District.
4. The Assistant Divisional Engineer,  
Highways Department (Ka) (Ma) (Pa),  
Karaikudi,  
Sivagangai District.

+ 1 cc TO Mr.S.M.Sanjay , Advocate in SR No. 94272

+ 1 cc TO The Special Government Pleader in SR No. 94840

SML

AE/SV MMS/SAR2/08.01.2018/4P/7C

**Order made in  
W.P. (MD) No.23594 of 2017  
Dated: 21.12.2017**