



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON :12.04.2017
DELIVERED ON: 26.04.2017

CORAM :

THE HONOURABLE MR.JUSTICE A.SELVAM
AND
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Writ Petition (MD) No.753 of 2017
and
W.M.P.(MD) .Nos.614 and 2480 of 2017
and
W.P.(MD) .No. 1424 of 2017
and
W.M.P.(MD) .Nos.2016, 2017 and 1170 of 2017

W.P.(MD) .No.753 of 2017:

Karmegam ... Petitioner

Vs.

- 1.The District Collector,
District Collectorate,
Madurai.
- 2.The Revenue Divisional Officer,
District Collectorate,
Madurai.
- 3.The Divisional Engineer,
State Highways Department,
Alagarkovil Road, Madurai-2.
- 4.The Assistant Divisional Engineer,
(Construction and Maintenance)
State Highways Department,
Madurai-2.
- 5.The Assistant Engineer,
State Highways Department,
Madurai South,
Madurai.
- 6.R.Nallamani

... Respondents

(R-6 is impleaded vide court order dated 23.01.2017 in W.M.P.(MD) .
842 of 2017)

Prayer in W.P.(MD) .No.753/2017:Petition filed under Article 226 of
the Constitution of India praying for issuance of a Writ of
Certiorari and/or writ of habeas corpus for the records relating to the 4th respondent's
impugned order dated 05.01.2017 in Notice
No.2/encroachment/2017/EVA/date:05.01.2017 and quash the same.



05.01.2017 calling upon the petitioner to remove the structures encroaching the Varanasi-Kanyakumari Highway at 440/020 Km, comprised in Sy.No.226/4C of Madakkulam Village, Madurai District, within a period of seven days.

The Assistant Divisional Engineer (3rd respondent in W.P. (MD).No.1424 of 2017) issued the impugned notice dated 10.01.2017 calling upon the petitioner to remove the structures encroaching the Varanasi-Kanyakumari Highway at 440/020 Km, comprised in Sy.Nos.226/1B, 1C of Madakkulam Village, within a period of seven days.

3.The case of the petitioner is that an extent of 60 cents in Sy.No.226/4 belonged to his great grandmother, Rakkayi Ammal under a sale deed dated 13.09.1938. It was gifted to her son Rakkappa Konar under a settlement deed dated 22.03.1957. The said Rakkappa Konar executed a Will dated 30.10.1992 in his favour (petitioner) and his brother Nallamani. Sy.No.226 was subdivided into Sy.No.226/4A (extent of 19 cents), 226/4B, (extent of 14 cents) and 226/4C (extent of 27 cents). An extent of 19 cents and 14 cents in Sy.Nos.226/4A and 4B was acquired by the Government for the construction of by-pass road. Sy.No.226/4A and 4B have been registered in the Village account as 'village poromboke'. But Sy.No.226/4C has been registered as 'road'. According to the petitioner, Sy.No.226/4C should have been registered in the name of Rakkappa Konar. He made a representation to the Revenue Divisional Officer, Madurai to change the classification of land in Sy.No.226/4C. The Revenue Divisional Officer recommended to the District Revenue Officer to issue patta in the name of the petitioner. The Special Commissioner and Commissioner of Land Administration by his letter dated 18.02.2004 directed the Revenue Divisional Officer, Madurai to pass necessary orders on the appeal petition filed by the petitioner. Thereafter, the Revenue Divisional Officer, Madurai, by an order in Na.Ka.No.949/04/E dated 18.04.2005 held that Sy.No.226/4C belonged to the Government. He rejected the request of the petitioner to transfer patta in his name.

4.Thereafter, the petitioner was called upon by way notice, dated 23.07.2005 to remove the encroachments made by him on the highway. As against which, the petitioner has filed a writ petition in W.P.(MD).No.4487 of 2004 for a direction to the Superintending Engineer, Divisional Engineer and Assistant Engineer not to encroach upon the property of the petitioner in Sy.No.226/4C of Madakkulam Village, Madurai South Taluk, Madurai District. The learned Single Judge, by his order dated 26.06.2007 dismissed the writ petition, as the respondents therein have filed a counter affidavit disputing the ownership of the petitioner. The learned Single Judge has observed that it is for the petitioner to establish his legal right over the land before an appropriate Civil Court and writ remedy is not open to the petitioner. The writ appeal preferred by the petitioner in W.A. (MD).No.463 of 2007 was dismissed by this Court, on 15.07.2008.



Thereafter, the petitioner has filed a suit in O.S.No.511 of 2016. The impugned notices were issued on 05.01.2017 and 10.01.2017. The present writ petitions have been filed on 11.01.2017 and 24.01.2017 respectively.

5.The learned Special Government Pleader, appearing for the respondents 1 to 5 in W.P.(MD).No.753 of 2017 and respondents 1 to 4 in W.P.(MD).No.1424 of 2017 would submit that this Court in W.P.(MD).No.1436 of 2014, has passed an order on 09.11.2016, directing the respondents therein to remove the encroachments on the highway. He would also submit that the brother of the petitioner has filed a contempt petition in Cont.P.(MD).49/2017 as against Highways authorities and a Division Bench of this Court has passed an order to remove the encroachments on the Highway and in pursuance of the order, the Assistant Divisional Engineer issued a notice dated 18.01.2017 for removal of encroachment on the highway comprised in Sy.Nos.226/4C and 226/1B and 1C. He would further submit that thereafter, on 28.01.2017, encroachments on the highway were removed and that therefore, these writ petitions have become infructuous.

6.We have heard the learned counsel on either side and perused the records carefully.

7.As already noticed, the petitioner filed these writ petitions on the basis that he is the owner of the land in question. However, the Highways authorities claimed that the land in question belongs to them. The learned Single Judge dismissed the writ petition filed by the petitioner in W.P.(MD).No.4487 of 2004, dated 26.06.2007, with respect to the land in Sy.No.226/4C. The learned Judge held as follows: "As the respondents have filed a counter affidavit disputing the ownership, it is for the petitioner to establish his legal right over the land before an appropriate Civil Court and writ remedy is not open to the petitioner." The order of the learned Single Judge was upheld by the Division Bench in W.A.(MD).No.463 of 2007, dated 15.07.2008. The present writ petitions have been filed relating to the property in Sy.Nos.226/4C and 226/1B and 1C. This Court is bound by the earlier Division Bench decision. In these circumstances, we are not inclined to entertain these writ petitions.

8.It is seen from the records that the petitioner encroached on the highway and put up structures encroaching the highway. The learned Special Government Pleader on the basis of the report, dated 28.01.2017, of the Assistant Divisional Engineer, Highways, (Construction and Maintenance), Madurai, reported that in pursuance of the orders of this Court, the above structures put up by the petitioner have been removed. The submission of the learned Special Government Pleader are placed on record. As the structures encroaching the highway and covered by the impugned notices have already been removed, we are of the



considered view that nothing survives for consideration in these writ petitions. Therefore, the writ petitions are liable to be dismissed.

9. In the result, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
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2. The Revenue Divisional Officer,
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3. The Divisional Engineer,
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4. The Assistant Divisional Engineer,
(Construction and Maintenance)
State Highways Department,
Madurai-2.
5. The Assistant Engineer,
State Highways Department,
Madurai South,
Madurai.

+4cc to Mr.V.Vinayagamoorthy, Advocate, SR.53999, 54000
+3cc to Mr.R.Ramasamy, Advocate, SR.54034, 54179
+1CC TO M/S.S.MANO HARAN, ADVOCATE, SR NO.54356
+1CC TO SPECIAL GOVERNMENT PLEADER, SR NO.54641

Writ Petition (MD) Nos.753 and 1424 of 2017
26.04.2017

VS

kk/SKN RSK/SAR4-28.04.2017-5P-14C