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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.10.2017
CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD) No.2129 of 2016
and
W.M.P (MD) No.1856 of 2016

P.Ponnanai : Petitioner
.vs.

1.The District Collector,
Madurai District,
Madurai.

2.The Chief Engineer,
State Highways,
Chennai.

3.The Assistant Executive Engineer,
State Highways,
Melur, Madurai District.

4.The Commissioner,
Melur Municipality,
Madurai District.

5.The Inspector of Police,
Melur Police Station,
Madurai District.

6.K.Easwari : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Mandamus by directing the respondent No.1 to 5 to remove the encroachment put up by the sixth respondent at the entrance of the daily market situated at Melur-Sivagangai Road, Madurai, Madurai District in pursuance to the Petitioner's representation dated 12.1.2016, pending disposal of the main Writ Petition.

For Petitioner
For Respondents
1 to 3 and 5
For Respondent-4
For respondent-6

:M/s.R.Anand
:Mr.M.Govindan
Special Govt.Pleader
:Mr.J.Gunaseelan Muthiah
Govt.Advocate
:Mr.M.J.Lawrance



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 Mandamus directing the respondent No.1 to 5 to remove the encroachment put up by the sixth respondent at the entrance of the daily market situated at Melur-Sivagangai Road, Madurai, Madurai District, in pursuance to the Petitioner's representation, dated 12.1.2016.

2.Heard both sides.

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

4.According to the Petitioner, he is serving as Teacher in Subramania Bharathi Higher Secondary School, Melur. Further, there is a daily market functioning in between Melur to Sivagangai Road and the entry point of such market falls at the State Highways. Inasmuch as the market comprising of number of shops in all categories, every time, irrespective of days, there will be huge crowd therein, in which, people at large, not only from Melur Taluk, but also from the adjacent villages used to come for purchasing their required items. Apart from that, it is the case of the Petitioner that the said market has numerous shops meant for selling fish and meat, not only on retail basis but also in a large scale through auction.

5.The main grievance of the Petitioner is that the sixth respondent had made encroachment at the entrance of the daily market situated at Melur, Sivagangai Road, Madurai and it was informed to the 5th respondent /The Inspector of Police, Melur Police Station, Madurai District and coming to know about the same, the sixth respondent had placed a small pillar sized structure at the said shed and started claiming that the same is deity by name ''Sangili Karuppasamy''. Further, the sixth respondent by projecting her claim in the name of Deity ''Sangili Karuppasamy'', she has managed the Police party.

6.At this stage, the learned counsel for the Petitioner proceeds to point out that the sixth respondent taking advantage of the lethargic attitude of the official respondents, has put up a RCC Building at the encroached area, for which, she has already collected raw materials in connection with her construction and on a war-footing, she is digging a dug, so as to keep it as a foundation point.

7.The Petitioner has made a representation to the respondents 1 to 5 to remove the encroachment made by the sixth respondent. However, the respondents 1 to 5 had not taken any action on the



representation of the Petitioner, dated 12.1.2016. Hence the Petitioner has filed the present Writ Petition.

8. On behalf of the third respondent, it is represented before this Court that the third respondent/The Assistant Executive Engineer, State Highways, Melur, Madurai District issued a notice to the sixth respondent on 9.2.2016 for removal of encroachment made by her. It appears that by the said incomplete structure, there is also a hut bearing the name 'Anna Sumaithookkum Thozhilalar Sangam' and the said Sangam encroached on the property of Highways Construction and Maintenance Department which has also obstructed the pathway of daily market at Melur.

9. However, a plea is made on behalf of the respondents 1 to 5 that the respondents 2 and 3 are taking steps to remove the encroachment made by the sixth respondent with the help of other department. In this connection, it is useful for this Court to make a pertinent reference to Section 28(2) of the Tamil Highways Act 2001, wherein, it is observed as under:

'28.Prevention of encroachment.--(1).....

(2) The Highways Authority or any person authorized by it in this behalf, may--

(i) remove, without any notice, any movable temporary structure, enclosure, stall, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching the highway or in any area where the construction or development of a highway is undertaken or proposed to be undertaken;

(ii) remove any immovable structure, whether permanent or temporary in nature, encroaching the highway or in the area vested with Government under this Act, after issuing a show cause notice against such removal, returnable within a period of seven days from the date of receipt thereof;

Provided that any representation received within the time limit shall be considered by the authority or officer concerned before passing final orders.'

10. It is to be borne-in-mind that Section 28 of the Tamil Nadu Highways Act envisages the Highways Authority to remove encroachment from Highways land with a view to ensure the prevention of unauthorized encroachment. In fact, the ingredients of Section 29 of Act, 2001 contemplates 'Recovery of Cost of removal of encroachment'. Indeed, the cost of removal of encroachments or the cost of protective work carried out in respect of any encroachment shall be paid by the encroacher, failing which, the cost shall be recovered by disposing of the



11. In view of the categorical averment made by the third respondent/The Assistant Executive Engineer, State Highways, Melur, Madurai District that a notice was issued to the sixth respondent on 9.2.2016 for removal of encroachment made by her, this Court directs the respondents 2 and 3 to look into the representation of the Petitioner, dated 12.1.2016 within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the respondents 2 and 3 are directed to provide necessary opportunity to the purported encroacher namely, the sixth respondent and others concerned, if any and after getting their objections/remarks, is to pass necessary orders on merits, of course, after providing adequate opportunity to the Petitioner and others concerned. The said final order is to be passed by the third respondent within a period of four weeks thereafter. It is open to the Petitioner as well as the encroacher namely, the sixth respondent to raise all factual and legal pleas before the third respondent and to seek redressal of their grievance, of course, in the manner known to law and in accordance with law.

12. With the aforesaid observation(s) and direction(s), the Writ Petition stands disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To

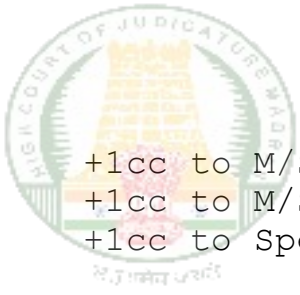
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<https://hccourtscs.judges.org/>
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+1cc to M/S.J.Gunaseelan Muthiah, Advocate SR.No. 81879
+1cc to M/S.J.Lawrance, Advocate SR.No. 81983
+1cc to Special Government Pleader, SR.No. 81958

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ORDER MADE IN
W.P. (MD) No. 2129 of 2016
and
W.M.P (MD) No. 1856 of 2016
06.10.2017

vsn
JM/MR KKR/SAR 1/23.10.2017/5P/9C