

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

W.P.No.6290 of 2018
and W.M.P.No.7775 of 2018

Ideal Gas Service,
Indian Oil's Indane Distributor,
Represented by its Partner, A.K.Sreesh,
8, East Bashyagaralu Road,
R.S.Puram, Coimbatore-641 002. ... Petitioner

Vs

1.Assistant Engineer,
Highways Department,
North Division,
Coimbatore-641 018.

2.Assistant Divisional Engineer,
Highways Department,
North Division,
Coimbatore-641 018. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in his impugned letter bearing No.0827/2018/Assistant (OU) (PO)/dated 06.03.2018 and quash the same and forbear the respondents, their men, their agents and anyone claiming under them from evicting the petitioner from their lands without following the due process of law.

For Petitioner : Ms.Asha
for M/s.Sarvabhauman Asso.

For Respondents: Mr.A.N.Thambidurai,
Special Government Pleader

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice for respondents.

2.The petitioner claims that he has purchased the land admeasuring to an extent of 8,853 sq.ft in the layout formed by one R.Narayanasamy comprised in S.No.4/6, Vadavalli Village under two registered Sale Deeds bearing Document Nos.968 and 969 dated 19.03.1984 registered on the file of the Sub Registrar Office, Kuniamuthur, Coimbatore and according to the petitioner, it is an approved layout. The petitioner thereafter had constructed a godown for storage of Liquid Petroleum Gas cylinders after obtaining necessary permission from the concerned authorities and also entered into an Agreement of Distributorship with the Indian Oil Corporation from the year 1994 onwards and the said Distributorship Agreement has been periodically renewed and still in force and the petitioner is in possession and enjoyment of the said extent of land.

3.The petitioner would further aver that the 2nd respondent vide communication dated 15.06.1995, requested the petitioner to part with 4 Cents of land measuring to an extent of 29 Metres in length and 7 Meter to 5.50 Metres in breadth for the purpose of approach road to the proposed Bridge vide letter dated 26.06.1995. The petitioner has given conditional acceptance and also laid down certain conditions and those conditions were also complied with and thereafter, the respondents had taken possession of the land admeasuring to an extent of 2148 sq.ft out of the 8853 sq.ft leaving an extent of 6705 sq.ft. The petitioner thereafter, in the year 2003 submitted a plan for altering the existing structure and accordingly, carried on his business. The petitioner to his shock and surprise, was issued with the impugned notice dated 06.03.2018 by the 1st respondent stating among other things that he has encroached upon the land belonging to the Tamil Nadu Highways Department and thereby calling upon him to vacate and deliver the vacant possession of the same within a period of three months from the date of receipt of a copy of notice. The petitioner challenging the legality of the impugned notice dated 06.03.2018, has filed this writ petition and it was entertained on 20.03.2018.

4.Mrs.P.T.Asha, learned counsel appearing for the petitioner has drawn the attention of this Court of the typed set of documents and would submit that in the light of the fact that the respondents themselves had taken possession of the land admeasuring to an extent of 2148 sq.ft out of the 8853 sq.ft leaving an extent of 6705 sq.ft. as early as in the year 1995, it cannot be contended that the petitioner had encroached upon the land and would further add that no provision of law has been invoked for issuance of such notice. Therefore, the said notice is illegal and arbitrary and prays for quashment of the same.

5.Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents would submit that since the petitioner has encroached upon the land belonging to the Highways, notice has been rightly issued.

6.This Court has considered the rival submission and also perused the materials placed before it.

7.In the considered opinion of this Court, the impugned notice issued by the 1st respondent is per se unsustainable in law for the reason that Chapter 4 of the Highways Act, 2001 speaks about the dealing with the acquisition of property and Chapter 5 speaks about due provision of unauthorised occupant and encroachment of the Highways and removal of encroachment. As rightly pointed out by the learned counsel for the petitioner, in the impugned notice issued by the 1st respondent no provision of law, rules or regularisation have been quoted and simply called upon the petitioner to remove the encroachment and hence on the sole ground, the impugned notice warrants interference.

8.In the result, the writ petition is allowed and the impugned notice dated 06.03.2018 is quashed and if the respondents are so advised, they are at liberty to invoke the provisions of Tamil Nadu Highways Act, 2001. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

sk

To

1.Assistant Engineer,
Highways Department,
North Division,
Coimbatore-641 018.

2.Assistant Divisional Engineer,
Highways Department,
North Division,
Coimbatore-641 018.

+ 1 cc to M/s. Sarvabhauman, Advocate Sr.24667

+ 1 cc to Mr.Government Pleader Sr.24869

WP.No.6290 of 2018

PVS (CO)

<https://hcservices.ecourts.gov.in/hcservices/>
EU (20/04/2018)