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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.03.2018

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THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.2038 of 2018

T.Kamalakaran

.. Petitioner

Vs.

1. The District Collector,
District Collectorate,
Thiruvallur - 602 001
2. The Revenue Division officer
Ambattur Revenue Division,
Anna Nagar, Western Extn.,
Chennai - 600 101
3. The Tahsildar,
Ambattur Taluk,
Ambattur, Chennai - 600 053
4. The Divisional Engineer (H).
Highways Department,
Chennai city roads, Division,
Chennai - 600 015
5. The Inspector of Police,
Law and Order
V-4, Rajamangalam Police Station,
Kolathur, Chennai - 600 099
6. The Asst. Divisional Engineer (H)
Highways Department,
Chennai City Roads Division,
Chennai - 600 015
7. Prabhakaran
8. Kavitha

..Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus directing the Respondents 1 to 6 to consider the Petitioner's representation dated 11.01.2018 within a stipulated period fixed by this Court.



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For Petitioner : Mr.Karthikeyan
for Mr.K.Manikandan

For Respondents : Mr.R.Udayakumar for R1 to 6
Additional Government Pleader
Mr.S.Balaji for R7 and R8

O R D E R

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

Heard the Learned Counsel for the Petitioner, Learned Additional Government Pleader for Respondents 1 to 6 and Learned Counsel for Respondents 7 and 8.

2. According to the Petitioner, he is the absolute owner of the property situated at Ambattur Taluk, Korattur Village, Thathankuppam bearing old Survey No.128/1B3, Town Survey No.118/5, Chennai measuring an extent of 4146 Sq.Feet, which he originally purchased from Pachaiappan and Vitabai through a registered Sale Deed dated 13.05.2004 vide Documents Nos.1542/2004 and 1543/2004 on the file of SRO, Korattur.

3. The Learned Counsel for the Petitioner submits that the Petitioner as well as other residents of the area rely on the service road, which runs along way to the 200 feet bypass road not only for the residents of that area also for other passengers passing from that side are also using the service road. Further, next to Petitioner's property that is, on the northern side of his property belongs to 8th Respondent, which is a property admeasuring about 1631 sq.ft., which is in the triangular shape, the land on the western side of the 8th Respondent's land belongs to the Highways Department and left it for service road, the residents of that area, other passengers and himself have to use the service road for transportation and that is the only road left for them, which connects the bypass road. In this background, the 8th Respondent and her husband, who is the 7th Respondent herein, with the crooked intention in order to encroach the land, which belongs to Highways Department, had taken many measures like constructing house, planting saplings, by doing these, they converted their triangular shape land into rectangular shape, which is their main intention. Many times they had indulged themselves to encroach the Government Land, which had become a great endanger to the residence and public accessing the service road. The Petitioner has taken several initiatives and sent many representations to the concerned authorities requesting them to conduct enquiry and to take appropriate action to remove the encroachment.

4. Apart from the above, the Learned Counsel for the Petitioner contends that once again on 21.11.2017, the Respondents 7 and 8 tried to encroach the government land, unlike previous encroachment, this time, they have laid a



concrete beam to an extent of 10 feet across the service road. After coming to know about this, the Petitioner lodged a complaint on the file of Rajamangalam Police Station / 5th Respondent. Based on his complaint, the 5th Respondent had conducted enquiry and warned the 7th and 8th Respondents to remove the encroachment done by them, after which they stopped further encroachment and left the beam laid by them as such.

5. Inasmuch as the 7th and 8th Respondents had not removed the 10 feet beam, after enquiry, the Petitioner made several request to the Respondents 1 to 6, however, no action has been taken to remove the said encroachment. In the meanwhile, the Respondents 7 and 8, by constructing a wall, laid iron fencing connecting the wall and it will be clear from visualising the photographs, about the extent of encroachment made by them belongs to the Highways Department. Therefore, the Petitioner made a representation on 11.01.2018 by enclosing the photographs showing the encroachment on the Government land and Road belonging to the public road to the Respondents 1 to 6 with a view to take appropriate action against the 7th and 8th Respondents and their henchmen in accordance with Law and further to remove the encroachment in the said Government Land and Public Road. Since the Respondents 1 to 6 had not taken any action against the Respondents 7 and 8, the Petitioner has filed the present Writ Petition seeking for issuance of a direction by this Court in directing the Respondents 1 to 6 to consider his representation dated 11.01.2018 within a time fixed by this Court.

6. Per contra, it is the submission of the Learned Additional Government Pleader appearing for Respondents 1 to 6 that the 3rd Respondent / Tahsildar, Ambattur had filed an affidavit before this Court that the land in Town Survey No.189/1, Block 32, Ward-E, Korattur Village, Ambattur belongs to 'Highways Department' in Revenue Accounts and the total extent of the land is 6.40.50 hectares. The adjacent land owners in Town Survey No.121, namely, the 8th and 7th Respondents had encroached the Highways Department land measuring an extent of 92 square meter in Town Survey No.189/1, Ward E, Block 32 of Korattur Village by a compound wall. As a matter of fact, the identified encroachments were informed to the Highways Department.

7. Apart from filing of an affidavit dated 28.02.2018 by the 3rd Respondent / Tahsildar, Ambattur, the said Respondent had filed a Status Report dated 19.03.2018 before this Court mentioning that the encroachment made by the adjacent land owners, namely 7th and 8th Respondents in the Highways Department land measuring an extent of 0.92.0 Square Meter in Survey No.189/1, T.S.No.121, Ward E, Block 32 of Korattur Village by fencing and a compound wall was evicted fully on 17.03.2018 along with the Revenue Department Staffs, Highways Department Staffs with the assistance of Police Department in



the presence of encroachers. Therefore, there is no encroachment on the above subject land.

8. By way of Reply, the Learned Counsel for the Petitioner submits that the encroachments were not fully removed and it is only partially removed. According to the Respondents 1 to 6, the compound wall that is constructed was removed. However, the Learned Counsel for the Respondents 7 and 8 would submit that if there are more encroachments [other than the one removed by the authorities] and the same being established upon the conduct of enquiry, then, the Respondents 7 and 8 have no objection for removal of remaining encroachment. As such, the Petitioner as well as the Respondents 7 and 8 are directed to produce necessary documents before the 3rd Respondent / Tahsildar, Ambattur. After conducting a survey, which is to be made by the recognised / Approved Taluk Surveyor and after getting necessary report from the Surveyor, if any further encroachments are found to be in existence, then, the 3rd Respondent shall remove the same by taking assistance of the 5th Respondent / Inspector of Police, Law and Order, V-4, Rajamangalam Police Station, Kolathur, Chennai - 600 099, if any resistance is offered. It cannot be gainsaid that the Petitioner as well as the Respondents 7 and 8 and any other official Respondents are to be heard prior to the passing of the orders by the 3rd Respondent / Tahsildar in the subject matter in issue, of course, after providing adequate opportunity by adhering to the 'Principles of Natural Justice'.

9. It is open to the respective parties, namely, the Petitioner as well as the 7th and 8th Respondents to raise all factual and legal pleas and the same may be taken note of at the time of passing of the order by the 3rd Respondent and such matters would be adverted to in the order to be passed. Before parting with the case, this Court points out that for conduct of survey, the Petitioner is directed to pay requisite fee charges before the competent authority.

10. In this connection, it may not be out of place for this Court to make a pertinent mention that in W.P.No.3546 of 2018, this Court by means of an Order dated 19.02.2018 with reference to the provisions of the Tamilnadu Land Encroachment Act, 1905 had observed the following:

"7. Before parting with the case, this Court points out that where the impugned order assails the notice issued under Section 7 of the Tamil Nadu Land Encroachment Act (Act-III) of 1905, the petitioner has a right to furnish the reply to the said notice and after hearing the parties and the complainant, if any, necessary orders will have to be passed by the competent authority under Section 6 of the said Act. Against this order passed under Section 6, an appeal is provided under the said Act. Also that, if the



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appeal under Section 10 of the Act, 1905, is not filed by the aggrieved person, then, the filing of the Writ Petition without exhausting effective, efficacious, viable and alternative remedy, is a premature and otiose one, in the considered opinion of this Court. Further, if the reply is given, the petitioner must file necessary proof. If the said reply is not referred to in the order passed under Section 6 of the Act, or if there is no reference to the fact that no reply was filed by the petitioner, or if any proof for sending the reply or acknowledgement is not filed, the Office of the Registry of this Court may ask for necessary details from the petitioner prior to the numbering of the Writ Petition. Further, the authorities must ensure that the final order passed by them refers to the reply, if any filed by the person who received the notice under Section 7 of the Act, and if the same is not adverted to in the order passed by the authority, then as against the erring/deviant authority, necessary departmental action may be taken against him for his lapse/dereliction in regard to the discharge of his duties. The Registry is directed to comply with these directions in future, when the Writ Petitions are filed challenging the notices/orders passed under the provisions of the Tamil Nadu Land Encroachment Act."

11. Besides the above, in W.P.No.21239 of 2005, etc., batch, by an order dated 18.12.2017 in which one of us [S.Vaidyanathan,J], is a Member had observed the following, as regards the procedures to be followed by the Authorities, who conduct summary proceedings:-

"6. This Court makes it further clear that the regularisation proceedings shall be conducted by the respondents after hearing necessary parties who are likely to be affected and if there are complainants, they should also be heard. Whenever parties appear, the applicant(s) as well as the complainant(s) shall be heard and the conduct of the proceedings should be written down by the officer concerned who is hearing the matter, and he shall obtain signatures in the proceedings after recording the submissions if any made. It is like summary proceedings. The documents filed by the parties need to be given Exhibit numbers. A copy of the proceedings shall be furnished immediately thereafter to the parties concerned to avoid unnecessary allegation against the officials that the records have been manipulated. The authority concerned shall seek for written submissions from the petitioner(s) / applicant(s) / complainant(s) within a time frame and thereafter, the authority shall pass appropriate orders within thirty days in accordance with law. "



12. Notwithstanding the fact this Court in W.P.No.21239 of 2005 etc., batch dated 18.12.2017 as stated supra had passed an order in the context of the authorities, who deal with the provisions of the Tamilnadu Town and Country Planning Act, 1971, yet this Court is of the view that the very same procedure may also to be followed by the Authorities, as far as practicable even under the Tamil Nadu Encroachment Act, 1905.

13. With the above said observation(s) and direction(s), the Writ Petition stands disposed of. However, Registry is directed to list the matter for 'Reporting Compliance' on 08.06.2018 by the 3rd Respondent / Tahsildar, Ambattur, Chennai.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssd

To

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District Collectorate,
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2. The Revenue Division officer
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6. The Asst. Divisional Engineer (H)
Highways Department,
Chennai City Roads Division,
Chennai - 600 015

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+1cc to Mr.S.Balaji, Advocate Sr.No.20875
+1cc to Government Pleader Sr.No.21410

sm:9.4.2018

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