

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:19.01.2018

Coram

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

W.P.No.1141 of 2018 and
W.M.P.Nos.1419 & 1420 of 2018

P.R.Sundaramoorthy .. Petitioner

Vs.

1.The Secretary (Highways Department)
Fort St. George, Secretariat,
Chennai.

2.The Additional Divisional Engineer,
Highways (Construction & Maintenance),
Ambattur Sub Division,
Chennai – 600 054.

3.The Tamil Nadu Panchayat Ombudsman,
100, Anna Salai, Guindy,
Chennai – 600 032.

4.The Collector,
Thiruvallur District.

5.The Chairman,
Tamil Nadu Sum Clearance Board,
Kamarajar Salai, Chennai – 5.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari by calling for the records connecting to passing Order No.262 of 2017 dated 21.11.2017 by the 3rd Respondent and consequential notice in Final Notice No.1006/2017/C2 dated 12.12.2017 issued by the 2nd

Respondent and quash the same.

For Petitioner : Mr.K.Raju

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

ORDER

[Order of the Court was made by S.VAIDYANATHAN, J.]

The petitioner is said to have been in possession of a property alleged to have purchased, by means of an unregistered sale deed dated 04.05.1992, wherein the schedule of property has been mentioned. In that, it has been stated that it is Erikarai lake and poramboke land in S.No.239/2. Thereafter, a power of attorney was registered on 06.05.1992 and based on that, another registered sale deed was executed on 09.05.1993.

2.According to the petitioner, the land in question is not a Highways land and he is in possession of the land for several decades. He has been paying house tax, property tax, water charges and electricity charges and is in possession of family card, voter ID card and Aadhar card. According to the petitioner, the provisions of the Tamil Nadu Highways Act will not be applicable to this case and that the issue was taken to Ombudsman, who held

that S.No.239/2 is Erikarai poramboke and that the said Ombudsman has no locus to decide the issue. He further stated that the petitioner was not given any opportunity of hearing and a final notice dated 12.12.2017 has been issued, which is questioned in this writ petition.

3.A perusal of the document produced by the petitioner makes it very clear that he was given a notice on 24.09.2016, wherein he was asked to vacate on his own, as he had encroached the Highways land and that if the eviction does not takes place in seven days, proper action would be taken against him. The petitioner has given a reply to the said notice on 22.10.2016.

4.According to the petitioner, he is an illiterate. After marking a copy of the reply to the official who has issued the show cause notice/memo, he marked copies to other officials including the Chief Minister. It is stated that there are several encroachments and the land in question measuring an extent of 600 sq. ft. does not come under the Highways area. The document produced by the petitioner reveals that the sale deeds are not at all registered and that based on an unregistered sale deed, no one much less this Court can

come to a conclusion that the petitioner is the owner of the property. In the first sale deed dated 04.05.1992, in the schedule of property, apart from mentioning the survey number, it has been mentioned as 'Erikarai poramboke land' in S.No.239/2. In the Power of Attorney and in the Schedule, the same is not reflected. However, in the preamble portion, it has been mentioned as 'Erikarai'. In the second sale deed dated 09.05.1993, it has been mentioned as 'Erikarai poramboke' in S.No.239/2. In the first sale deed, the total extent of land is mentioned as 600 sq.ft. and in the Power of Attorney, it is mentioned as 547 ½ sq.ft., so also in the subsequent sale deed dated 09.05.1993.

5.From the narration of facts apart from scrutinising the documents, it is very clear that the petitioner has purchased the property probably based on documents created for the purpose of usurping the land mentioned in Survey No.239/2.

6.The Supreme Court and this Court, time and again, have held that the lands meant for, public purpose shall not be encroached by anyone much less a person like the petitioner.

7.The contention of the petitioner is that he has not been given any notice and that prejudice has been caused cannot be accepted. Firstly, no prejudice has been caused, as the petitioner has been given an opportunity to give an explanation and an explanation has been given by him. The same has been considered and ultimately the authority came to the conclusion that S.No.239/2 is 'Erikarai Poramboke' and that shops and buildings are constructed therein. The contention of the petitioner that he has not encroached the land in question and that there are other persons who have encroached the same, cannot be accepted. From the records, it is evident that the petitioner is an encroacher and he will have to be evicted forthwith, including any other encroachment in the Highways land/Erikarai/lake.

8.It is needless to mention that the authorities shall initiate steps to remove those encroachments and ensure that the lakes are restored, as the city is very often facing water scarcity for want of lakes and ponds. The petitioner shall on his own vacate the premises/building within 15 days from the date of receipt of a copy of this order, failing which, it is open to the authorities to remove

the encroachment, immediately thereafter, preferably within a period of fifteen days taking the assistance of Police.

9. With the above observations and directions, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

(M.V., J.) (S.V.N., J.)
19.01.2018

Speaking Order
Index : Yes / No
Internet : Yes / No
Sgl
To

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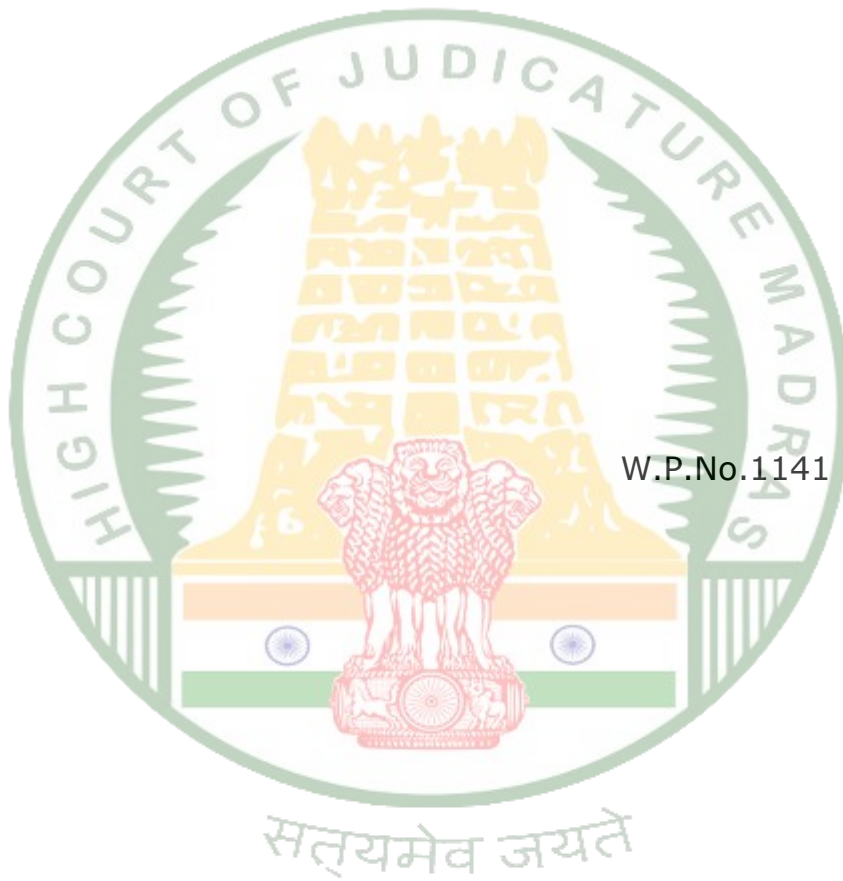
4. The Collector, Thiruvallur District.

5. The Chairman,
Tamil Nadu Sum Clearance Board,
Kamarajar Salai, Chennai – 5.

6. The Government Advocate,
High Court, Madras.

M.VENUGOPAL, J.
and
S.VAIDYANATHAN, J.

Sgl



W.P.No.1141 of 2018

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