

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.02.2018

Coram

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

W.P.No.24878 of 2017 and
W.M.P.No.26267 of 2017

Janarthanan

.. Petitioner

Vs.

1. The District Collector,
Kancheepuram District,
Kancheepuram
2. The Assistant Executive Engineers,
Highways Department (Building and Maintenance)
Tambaram Division,
Velacherry, Chennai - 600 042
3. The Tahsildar,
Solinganallur Taluk,
Kancheepuram District
4. The Revenue Office,
No.120, Rajiv Gandhi Road,
OMR, Sholinganallur,
Chennai - 600 119

..Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus directing the Respondents not to interfere with the Petitioner's peaceful possession and enjoyment of property to an extent of 30 cents bearing Survey No.245/1, in No.149, Pallikaranai Village, Sholinganallur Taluk, Kancheepuram District, without adhering procedure known to Law.

For Petitioner : Mr.J.Franklin
For Respondents : Mr.A.N.Thambidurai
Special Government Pleader
O R D E R

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

Heard the Learned Counsel for the Petitioner and the Learned Special Government Pleader for the Respondents 1 to 4.

2. According to the Petitioner, his father, Mr.Krishnan, was the owner of the property initially and he had purchased the property measuring an extent of 30 cents in Survey No.245/1 in Village No.149, Pallikaranai Village from Kannaiya Naidu by means of a Sale Deed dated 22.05.1959 (Document No.1080 of 1959) and later, patta was issued in his father's name and they had constructed shops to an extent of 6,000/- square feet, in Ground and First floor. His father, expired on 27.03.2016 and as elder son of his family, he is managing the property, after demise of his father.

3. The stand of the Petitioner is that without issuing notice to him, the 2nd Respondent / Assistant Executive Engineer, Highways Department, Building and Maintenance, Tambaram Village, Chennai - 42, is proposing to demolish his property, nearly 50 feet of his property would be demolished for Velachery - Tambaram Highway project. He approached the State High way Authorities and Revenue Authorities after coming to know about the proposal to acquire his property and the authorities had failed to give any particulars with regard to the proposed land acquisition of their property. In fact, the authorities have informed that they are going to demolish the marked portion on 16.09.2017.

4. At this stage, the Learned Counsel for the Petitioner points out that the 2nd Respondent had already started demolition of the building near his property of the Velachery - Tambaram Main Road and since they are the absolute owner of the property and are in rightful possession and enjoyment of the same by letting out shops to numerous tenants, the 2nd Respondent has no authority to interfere with his peaceful possession and enjoyment of the property.

5. The Learned Counsel for the Petitioner contends that as per Section 15(1) of the Tamilnadu Highways Act, 2001, after issuance of show cause notice to the owner of the property and after conducting enquiry, the Authorities shall proceed with the land acquisition proceedings, but, the Authorities have failed to issue notice to the Petitioner and as such, they had acted against the provisions of the Tamilnadu Highways Act, 2001. In short, the authorities had abused their power and therefore, the Petitioner has filed the present Writ Petition seeking relief of Writ of Mandamus in directing the Respondents not to interfere with the peaceful possession and enjoyment of property to an extent of 30 cents in Survey No.245/1 in Village No.149, Pallikaranai village, Sholinganallur Taluk, Kancheepuram District without adhering to the procedure known to Law.

6. Per contra, it is the submission of the Learned Special Government Pleader for the Respondents that the Government had accorded administrative sanction by virtue of G.O.Ms.No.108 Highways and Minor Ports (H.F.2) Department dated 12.09.2014 for widening of the existing road "Marmalong Bridge - Irumbuliyur" (Velachery - Tambaram Road) from four lane to six lane within 45 meters 'Right way', which is prescribed street alignment width for the above road in CMDA Master Plan - II. In fact, as per scheme, necessary Land Plan schedule have been submitted to the 1st Respondent / District Collector, Kancheepuram to acquire the patta lands under the Tamilnadu Highways Act, 2001 and action has been taken to remove encroachment by the authorities concerned.

7. The Learned Counsel for the Respondents brings it to the notice of this Court that at present, action is being taken to demarcate the Highways boundaries and the lands required for widening the patta lands and poramboke lands, and before that joint inspection is to be carried out with land acquisition officer's staff. Further, action is also being taken to demolish the encroachments in poramboke lands adjoining to the Petitioner's property. Moreover, the encroachments in Government lands adjoining to the Petitioner's property were cleared and the Writ Petitioner's persons occupied in his property have also taken action to clear the buildings in Survey No.245/1 of Pallikaranai Village with an object of public interest, which is required for widening of the above road. In any event, the land acquisition process is also still in progress for the patta lands in Survey No.56, (including the property of the Writ Petitioner) at Pallikaranai Village Sholinganallur Taluk, Kancheepuram District.

8. In reality, 1054 Sq. meter land in Survey No.245/1 is covered under acquisition proposals. Apart from that, after completion of the joint inspection work of all lands covered under acquisition proposals along with Revenue Staff (Land Acquisition Officer's staff), the revised Land Plan Schedule will be submitted to the 1st Respondent / District Collector, Kancheepuram enabling him and the Government to issue notification under Sections 15(2) and 15(i) of Tamilnadu Highways Act, 2001.

9. In so far as the Writ Petitioner's property is concerned, it is represented on behalf of the Respondents that the Land Acquisition process is to be followed in accordance with Law and Rules made there under in Tamilnadu Highways Act, 2001 and also Central Act, 30 of 2013 and that appropriate compensation shall be paid to the Writ Petitioner's property, according to the prevailing Law in force.

10. The Learned Counsel for the Petitioner invites the attention of this Court to the Order passed by this Court on 15.09.2017 to the following effect, which runs as under:

"2. The grievance expressed by the petitioner is that all of a sudden, the officials of the second respondent came on 12.09.2017 and marked a portion for demolition and taking advantage of the intervening holidays, the superstructure are likely to be demolished and prays for interim directions.

3. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondent nos.1 to 4 and seeks time to get instructions.

4. Call on 18.09.2017, in the motion list and till such time, the respondent nos.1 to 4 shall defer further proceedings as to the demolition of the superstructure in Survey No.245/1, in No.149, Pallikaranai Village, Sholinganallur Taluk, Kancheepuram District."

11. Besides the above, this Court, on 21.09.2017 at Paragraph Nos. 2 to 4 had observed the following:-

"2. When the matter was listed today, an additional affidavit along with additional typed set of documents was filed by the petitioner. The learned counsel appearing for the petitioner would submit that despite the subsistence of

the interim order being brought to the knowledge of the concerned officials, the demolition took place on 17.09.2017, and has also produced the photographs to that effect.

3. Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents would submit that he had also tried his level best to communicate the same to the concerned official, but it was not possible for him to do so.

4. A perusal of the photographs filed in the additional typed set of documents would show that major portion of the construction has been demolished. In the light of the photographs filed in the additional typed set of documents, parties are directed to maintain status quo as exists today till 06.11.2017. Counter affidavit of the second respondent by then and it shall meet out the allegation as to the date and time of receipt of information regarding the interim order dated 15.09.2017 and its non-compliance"

12. On 06.11.2017, this Court at Paragraph Nos.2 and 3 had held as under:

"2. The learned Special Government Pleader, on instructions, would submit that the superstructure that has been put up by the petitioner, is without any planning permission and on instructions would further add that, with regard to the unintended demolition of the superstructure put up by the petitioner, a compensation package is being worked out.

3. The learned counsel appearing for the petitioner seeks time to get necessary instructions in this regard."

13. At this juncture, a perusal of the contents of the Section 15 of the Tamilnadu Highways Act, 2001 under the caption 'Power to Acquire Land' indicates that the concerned District Collector are empowered to acquire any land for the purpose of any Highways or for Construction of Bridges, Culverts, causeways or super structures thereon for any purpose incidental or ancillary thereto, in furtherance of the objects of the Act, they may acquire such land by publishing in the Tamilnadu Government Gazette a notice specifying the description of such land and the particular purpose for which such land is required. It is also to be pointed out that as per Rule 15 of the Tamilnadu Highways Act, 2001, an enquiry is to be conducted.

14. The Learned Counsel for the Petitioner draws the attention of this Court to the fact that the Petitioner's 25 shops were fully demolished by the 2nd Respondent and in this regard, the contention of the Learned Counsel for the Petitioner is that, as on date, the Petitioner is without any income, since 25 shops were demolished by the 2nd Respondent and in fact, the 2nd Respondent is to provide adequate compensation for illegally demolishing the super structure put up by the Petitioner in the subject matter of the property in question.

15. By way of reply, the Learned Special Government Pleader appearing for the Respondents 1 to 4 submits that the Petitioner would be provided with an compensation package and the same being worked out and the compensation, in fact, will be paid to him at the time of acquisition of his land by the State Highways Authority. Therefore, the interest of the Petitioner is very much protected.

16. Considering the fact the Petitioner's land in Survey No.149 Pallikaranai village is required for acquisition by the 2nd Respondent and efforts are being taken by the 2nd Respondent and other Respondents for acquiring land in question, this Court, at this stage, taking into account of all the facts and circumstances of the present case, in an integral fashion, comes to an inevitable and irresistible conclusion that the Respondents shall not interfere with the peaceful possession and enjoyment of the subject matter of the land measuring an extent

of 30 Cents bearing in Survey No.245/1, in Village No.149, Pallikaranai Village, Sholinganallur, Kancheepuram Taluk till they commence and finalise the Land Acquisition Proceedings. Further, the Petitioner's possession in the subject land shall not be disturbed by one, till the land acquisition process in regard to the Petitioner's Land is completed in an overall fashion. Also the Respondents 1 to 4 shall take into account of the 25 shops put up by the Petitioner in Survey no.245/1 in No.149 to an extent of 30 cents in 0Pallikaranai village, Sholinganallur taluk, Kancheepuram District at the time of arriving at a compensation for the demolition of shops. While awarding compensation in regard to the acquisition of land measuring an extent of 30 cents bearing Survey No.245/1, in No.149, Pallikaranai Village, Kanchipuram District, the 2nd Respondent and other Respondents are directed to take into account all the illegal demolition and super structure of the 25 shops put up by the Petitioner in above said Survey Number and to determine the value with 9% Interest from the date of demolition of illegal shops of the Petitioner till the date of payment, in a fair, free, just, objective and in a dispassionate manner, uninfluenced and untrammelled// with any of the observations made by this Court in the present Writ Petition.

17. Before parting with the case, this Court grants liberty to the Petitioner to raise all factual and legal pleas before the 2nd Respondent / Competent Authority in regard to the illegal demolition of 25 shops in Survey No.245/1 in No.149, Pallikaranai Village, Sholinganallur Taluk Kanchipuram District and to make his claim in the manner known to Law and in accordance with Law, provided the shops are constructed in accordance with Law.

With the above direction(s), this Writ Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

ssd
To

1. The District Collector,
Kancheepuram District,
Kancheepuram

2. The Assistant Executive Engineers,
Highways Department (Building and Maintenance)
Tambaram Division,
Velacherry, Chennai - 600 042

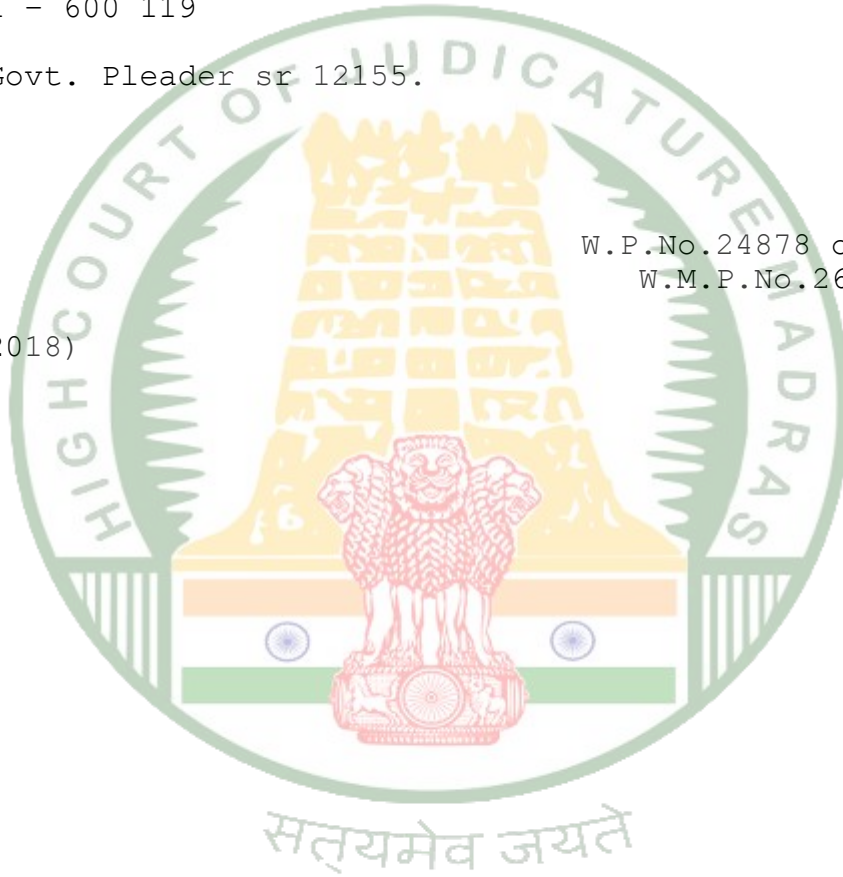
3. The Tahsildar,
Solinganallur Taluk,
Kancheepuram District

4. The Revenue Office,
No.120, Rajiv Gandhi Road,
OMR, Sholinganallur,
Chennai - 600 119

+1 CC to Govt. Pleader sr 12155.

W.P.No.24878 of 2017 and
W.M.P.No.26267 of 2017

SP(28/02/2018)



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