

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

CORAM:

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

W.P.No.25498 of 2017

R.Kandasamy

... Petitioner

vs.

1. The District Collector,
Coimbatore District.
2. The Divisional Engineer,
Construction and Maintenance,
Tamil Nadu State Highways Department,
Coimbatore North,
Trichy Road, Coimbatore.
3. The Tahsildar,
Coimbatore North,
Coimbatore.
4. Prasad Oommen ... Respondents

(R3 and R4 impleaded vide order of this Court, dated 14.12.2017 in W.M.P.No.35961 of 2017 in W.P.No.25498 of 2017)

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the Respondents to remove the encroachments in the State Highway in S.No.372 in Somayampalayam, Coimbatore District as agreed by the 2nd Respondent vide Letter in Na.Ka.No.684/2017/EVA-1, dated 17.05.2017 and keep the same for free flow of traffic without allowing anyone to put up barricade at the beginning of the road.

For Petitioner : Mr.N.C.Ashok Kumar
For Respondents 1 to 3 : Mr.A.N.Thambidurai,
Special Government Pleader

For 4th Respondent : No appearance

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 Additional Special Government Pleader appearing for the Respondents 1 to 3.

2. According to the Petitioner, there are encroachments in the State Highways running through S.No.372. In fact, the persons who own the property in S.No.373 in Somayampalayam Village had encroached upon the public road at S.No.372 and they had fenced a portion of the road with barbed wire, which had narrowed down the width of the public road. Also, the encroachers had blocked the public road by putting up barricades preventing free movement of vehicles. In this connection, the grievance of the Petitioner is that his numerous representations addressed to the Respondents to remove the encroachment on the public road had resulted in futile endeavor. Therefore, he was constrained to project an application under the Right to Information Act on 03.04.2015 requesting the 2nd Respondent/Divisional Engineer, Construction and Maintenance, Tamil Nadu State Highways Department, Coimbatore to furnish the particulars of road in S.No.372.

3. In fact, the 2nd Respondent furnished a reply on 05.05.2015 stating that the road in S.No.372 is a State Highways. Added further, the 2nd Respondent had informed the Petitioner that they are taking steps to remove the encroachment in S.No.372 after demarking the boundaries by the Revenue Department. In reply, the 2nd Respondent wrote a letter to the Petitioner stating that they had requested the Tahsildar, Coimbatore North, to conduct a land survey to identify the encroachment in the public road and that apart, it was also mentioned in the Letter that as soon as the Survey is completed, the encroachment in the public road could be removed with the assistance of Revenue Department, Police and Home Department.

4. It comes to be known that inspite of the letter dated 17.07.2015, written by the Assistant Divisional Engineer of the 2nd Respondent, the State Highways Department has not removed the encroachment for the past two years and thereafter, the Petitioner was constrained to approach the 2nd Respondent under the Right to Information Act, for which the 2nd Respondent gave a reply on 17.05.2017 stating that they are taking steps to remove the encroachments through the Revenue Department and inspite of repeated requests made by the Petitioner to remove the encroachments, Respondents 1 and 2 have not taken any steps to remove the encroachments in public road.

5. The fair stand taken on behalf of the Petitioner is that the Respondents 1, 2 and 3, owe the statutory duty to remove the encroachments in public road and for the past two years, they are deliberately delaying to take necessary steps to remove the encroachments by citing one reason or the other. As a matter of fact, Respondents 1 and 2 are bound to protect the Government property.

6. The stand of the Petitioner is that he can reach his property only through S.No.372, Somayampalayam Village and the road in question is a public road and the width of the road has been narrowed down by means of encroachment. It is to be relatively pointed by this Court that the 3rd and 4th Respondents were impleaded as per the order of this Court on 14.12.2017 in W.M.P.No.35961 of 2017 in the present Writ Petition.

7. Also, it comes to light as per the F.M.B. Sketch maintained by the Revenue Department that the width of the road in S.No.372 is 13.4 metres on one end and 12.8 metres on the other end. In this regard, Learned Counsel for the Petitioner submits that the 2nd Respondent makes a false claim that they had laid a 'Thar road' in S.No.372 with a width of 5.50 metres and in fact, no 'Thar Road' was laid in the entire stretch of the road in S.No.372 and although, it is a State Highways road, the road remains as mud road and the same was not upgraded as 'Thar road'.

8. Per contra, only the encroachers have laid a portion of the road as 'Thar Road', so as to reach the property and the remaining portion of the road stands as 'mud road'. Besides this, the 2nd Respondent, to a query raised by the Petitioner under the Right to Information Act, had falsely represented that they have spent a sum of Rs.51,62,981/- to upgrade the road in S.No.372 as 'Thar Road', which is a blatant lie.

9. Learned counsel for the Petitioner brings it to the notice of this Court that the Petitioner on an earlier occasion filed a Civil Suit in O.S.No.1080 of 2005 against the Respondents 1 and 2 and others to remove the encroachments in S.Nos.372 and 374. By virtue of the judgment and decree, dated 28.01.2008 in the aforesaid O.S.No.1080 of 2005, the relief of mandatory injunction was granted and in favour of the present Writ Petitioner in regard to the removal of encroachment in S.No.374, which is a Panchayat Road. The encroachers had filed O.S.No.1128 of 1998 before the District Munsif Court, against the Petitioner and the Respondents claiming the relief of injunction also in respect of S.No.372, which is a State Highways and ultimately, the said Suit was dismissed on 28.01.2008.

10. The sum and substance of the plea of the Writ Petitioner is that absolutely, there is no impediment for the Respondents to remove the encroachments and from the year 2015 onwards, Respondents have stated that they would take steps to remove the encroachments. Till date, nothing tangible has transpired in the subject matter in dispute. Hence, the Petitioner has filed the present Writ Petition.

11. This Court, on a careful consideration of the contentions advanced on behalf of the Petitioner, is of the considered view that the Petitioner is entitled to seek the relief of removing the encroachers in the State Highways in S.No.372 in Somayampalayam Village, Coimbatore District, in terms of the Letter of the 2nd Respondent, dated 17.05.2017, before this Court and to keep the said Survey Number free flow of traffic without allowing anyone to put up any barricade at the commencement of the road.

12. Accordingly, this Court, in the interest of justice, fair play and also based on equity, good conscience and also as a matter of prudence, directs the Respondents 2 and 3 to remove the encroachments in the State Highways in Somayampalayam Village, Coimbatore District by keeping in tune with the contents of the Letter, dated 17.05.2017, within a period of four weeks from the date of receipt of a copy of this order and to submit a Report before this Court by addressing a suitable communication to the Registrar-Judicial (Incharge) of this Court, without fail.

This Writ Petition is disposed of with the above observation(s) and direction(s). No costs. Consequently, connected W.M.P.No.26930 of 2017 is closed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

(aeb)

To:

1. The District Collector,
Coimbatore District.
2. The Divisional Engineer,
Construction and Maintenance,
Tamil Nadu State Highways Department,
Coimbatore North,
Trichy Road, Coimbatore.

3. The Tahsildar,
Coimbatore North,
Coimbatore.

4.The Registrar(Judicial) (in charge)
High Court, Madras.

5.The Section Officer,
Writ Section,
High Court, Madras.

+ 1 cc to M/s.C.Jagadish,Advocate,SR.7757

+ 1 cc to The Govt.Pleader, SR.8467

W.P.No.25498 of 2017

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