

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.24644 of 2018 and
WMP No.28682 of 2018

- 1.Subramani
- 2.Pachamuthu
- 3.Sekar
- 4.Ari
- 5.Janakiraman
- 6.Raghu
- 7.Sekar
- 8.Shanthi
- 9.Thangaraj @ Vedhagiri
- 10.Indira
- 11.Raghupathy

...Petitioners

-vs-

- 1.The State of Tamilnadu
Rep.by its Secretary, Fort St.George,
Secretariat, Chennai - 600 009.
- 2.The Collector,
Thiruvannamalai District.
- 3.The Assistant Zonal Engineer,
(Highways), Vandavasi.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the 3rd respondent not to take any action based on the impugned notice of the 3rd respondent vide jhf;fPJ vz;/112/2018/,epc/ehs; 1.3.2018.

For Petitioners : Mr.G.Jermiah
for J.Pachiyappan

For Respondents : Mr.R.Udhayakumar
Additional Government Pleader

O R D E R

[Order of the Court was delivered by
K.K.SASIDHARAN,J.]

The notice dated 1 March 2018 directing the petitioners to remove the encroachment in respect of a public property is under challenge primarily on the ground that notice was not issued before taking action involving civil consequences.

2. We have heard the learned counsel for the petitioners. We have also heard the learned Additional Government Pleader on behalf of the respondents.

3. The third respondent, who is present in Court today fairly admitted that he has not issued show cause notice to the petitioners under Section 28(2)(ii) of the Tamil Nadu Highways Act before passing orders for eviction.

4. The Tamil Nadu Highways Act contained detailed procedure with regard to eviction. The statutory authority was expected to issue notice to the encroachers before passing orders of eviction. In the subject case, no such procedure was followed by the third respondent.

5. The petitioners have alleged malafides against the third respondent. According to the petitioners, it was only to clear the land and to have access to the property owned by one Lingeswaran, the husband of the former President of Kadaisikulam, the third respondent initiated action for eviction. The said contention is refuted by the learned Additional Government Pleader by placing reliance on the notice issued to Lingeswaran to clear the encroachment.

6. In view of the non-compliance of the statutory provision and more particularly, Section 28(2)(ii) of the Tamil Nadu Highways Act, we quash the impugned notice. It is open to the third respondent to issue notice to the petitioners giving them reasonable time to submit their response. The third respondent shall consider the objections on merits and appropriate orders should be passed. While taking action for removal of encroachment against the petitioners, similar action should also be taken against similar other encroachers viz., Lingeswaran, in view of the stand taken by the third respondent that he is also in possession of the public property.

7. The writ petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

To

1.The Secretary,
The State of Tamilnadu,
Fort St.George,
Secretariat, Chennai - 600 009.

2.The Collector,
Thiruvannamalai District.

3.The Assistant Zonal Engineer,
(Highways), Vandavasi.

+1cc to Mr.J.Pachiyappan, Advocate SR.No.66035

+1cc to Government Pleader SR.No.65831

GMV(16/10/2018)

W.P.No.24644 of 2018

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