

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2018

CORAM:

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

W.P.No.28531 of 2017

M.Manokaran Petitioner

vs.

1. The Assistant Divisional Engineer,
Highways Department,
(Construction and Maintenance)
Kurinjipadi,
Cuddalore District.
2. The Divisional Engineer,
Highways (Construction and Maintenance),
Cuddalore,
Cuddalore District.
3. P.Ashok Respondents

(R3 impleaded as per order dated 31.01.2018
in W.M.P.No.35965 of 2017 in W.P.No.28531 of 2017)

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari, calling for the records of the 1st Respondent in his Proceedings in Ku.No.40/2017/E Va A/dated 31.10.2017 and quash the same.

For Petitioner : Mr.A.Muthukumar

For Respondents 1 & 2 : Mr.A.N.Thambidurai,
Special Government Pleader

For 3rd Respondent : Mr.P.R.Thiruneelakandan

* * * * *

O R D E R

(Order of the Court was made by S.VAIDYANATHAN,J.)

The Petitioner has come up with the present Writ Petition challenging the order dated 31.10.2017 passed by the 1st Respondent/Assistant Divisional Engineer, Highways Department, Kurinjipadi, Cuddalore District.

2. Heard the Learned Counsel for the Petitioner; Learned Special Government Pleader appearing for Respondents 1 and 2 and the Learned Counsel appearing for the impleaded 3rd Respondent.

3. According to the Petitioner, a dispute arose with regard to the title of his property situated in S.No.277/7, Vikravandi-Kumbakonam National Highways at Sethiathope Town Panchayat and action has been initiated under the Tamil Nadu Highways Act, 2001. He further stated that the 3rd Respondent herein viz. Ashok had filed a Writ Petition in W.P.No.1310 of 2017 and the First Bench of this Court, by an order dated 19.01.2017, disposed of the said Writ Petition by directing the authority concerned to carry out inspection of site and take action in accordance with law after notice to all concerned and conclude the proceedings. For better understanding, relevant portion of the said order is extracted hereunder:

"3. We, thus, direct the first respondent to carry out inspection of site to determine the current position within fifteen days from the date of receipt of the order and in respect of any unauthorized construction or encroachment to take action in accordance with law, after notice to all concerned, and conclude the proceedings within a maximum period of two months thereafter.

4. The District Collector/second respondent is called upon to look into the matter of inaction on the part of the authorities for almost three years and to determine why no action was taken and to fix responsibility and take consequent administrative disciplinary actions."

4. Pursuant thereto, since the Petitioner herein was not afforded an opportunity of hearing, he filed a Review Petition, which was later closed. Thereafter, the Petitioner herein preferred a Writ Petition in W.P.No.9780 of 2017 and the First Bench of this Court, by an order dated 20.04.2017 directed the Petitioner to give a representation to the authority concerned within a week from the date of receipt of a copy of the order, as the order dated 17.04.2017 passed by the Assistant Divisional Engineer, Highways Department, Kurinjipadi, Cuddalore District, which was impugned in the said Writ Petition, was passed without putting the Petitioner on notice.

5. Immediately thereafter, the Petitioner herein made a representation to the authorities concerned on 27.04.2017 with reference to the orders passed by this Court in W.M.P.Nos.6879

and 6872 of 2017 in W.P.No.1310 of 2017 and W.P.No.9780 of 2017. On receipt of the said representation, the 1st Respondent herein passed the order dated 31.10.2017 impugned in the present Writ Petition, in terms of the provisions of the Tamil Nadu Highways Act, 2001.

6. It is the contention of the Petitioner that the impugned order dated 31.10.2017 is in complete violation of the order of this Court dated 20.04.2017 made in W.P.No.9780 of 2017 and also in violation of Section 28(2)(ii) of the Tamil Nadu Highways Act, 2001. According to him, the impugned order has been passed without considering his representation dated 27.04.2017, at the instance of the 3rd Respondent herein, thereby giving a go-by to the orders of this Court made in W.P.No.1310 of 2017 and W.P.No.9780 of 2017.

7. On a reading of the impugned order, it appears that the authority concerned has not carried out site inspection and that the Petitioner herein has not been heard. Time and again, this Court has observed that whenever complaints are made, persons who are likely to be affected will have to be heard and objections, if any, have to be considered after affording an opportunity of personal hearing to the parties and only thereafter, an order has to be passed on merits, if there are no other legal impediments. Since there is violation of the order of this Court and also violation of the principles of natural justice, we are of the view that the impugned order will have to be interfered with.

8. Accordingly, the impugned order dated 31.10.2017 passed by the 1st Respondent herein is set aside. The 1st Respondent is directed to consider the Petitioner's representation in accordance with law and pass appropriate orders on or before 15.06.2018, after giving him an opportunity of hearing. It is open to the Petitioner, the 3rd Respondent and others concerned to raise all factual/legal pleas before the concerned authority, who shall take note of the same while passing orders.

9. It is made clear that if any orders are passed by the authorities in any of the proceedings either under the Tamil Nadu Highways Act, 2001 or under Tamil Nadu Land Encroachment Act, 1905, in violation of the principles of natural justice, without giving an opportunity of hearing to the parties including the complainant, if any, the District Collector or any other competent authority is bound to initiate disciplinary action against the person, who is responsible to pass orders in terms of the said Act and such erring Officials can be posted to any non-sensitive post.

10. We strongly condemn the act of the 1st Respondent herein in passing the impugned order in violation of the orders of this Court. Strictly speaking, the act of the 1st Respondent herein amounts to contempt of Court. However, we refrain from taking action against the 1st Respondent. If, any future irregularities are brought to the attention of this Court, appropriate action will be taken against the erring Officials.

11. The Writ Petition is allowed with the above direction (s) and observation(s). No costs. Consequently, connected W.M.P.No.30671 of 2017 is closed.

12. List this matter for 'Reporting Compliance' on 06.07.2018. It is made clear that if orders are not passed by the 1st Respondent within the time stipulated supra, the 1st and 2nd Respondents shall appear before this Court on 06.07.2018. The Petitioner and the 3rd Respondent are expected to participate/co-operate in the enquiry.

(aeb)

Sd/-
Assistant Registrar
/TRUE COPY/
Sub-Assistant Registrar

To:

1. The Assistant Divisional Engineer,
Highways Department,
(Construction and Maintenance)
Kurinjipadi, Cuddalore District.
2. The Divisional Engineer,
Highways (Construction and Maintenance),
Cuddalore, Cuddalore District.

+1CC to Mr.A.Muthukumar, Advocate in SR.NO. 15271

+1CC to Mr.P.R.Thiruneelakandan, Advocate in SR.NO. 15868

+1 CC to Government Pleader Advocate SR.NO. 15938

Order in
W.P.No.28531 of 2017

NRK [CO]
MLT-27/03/2018