

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.01.2018
Coram

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

W.P.No.29506 of 2017

A.Kuppusamy

.. Petitioner

Vs.

1. The District Collector,
Villupuram,
Villupuram District - 605 602
2. The Revenue Divisional Officer cum
Sub Collector, Tindivanam,
Villupuram District- 604 001
3. The Chief Engineer,
Construction and Maintenance Wing
State Highways Department,
Chepauk, Chennai - 600 005
4. The Divisional Engineer,
Construction and Maintenance Wing,
State Highways Department
Villupuram.
5. The Assistant Divisional Engineer
Construction and Maintenance Wing,
State Highways Department,
Tindivanam, Villupuram District
6. The Tahsildar,
Tindivanam Taluk,
Villupuram District - 604 001
7. A.Sankar

.. Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus directing the Respondents 1 to 6 to remove the encroachment in Railway Station Road in comprising Old Survey No.201/81 and its Re-Survey No.318/2, measuring 0.27.5 acres, situated at Olakkur Melpathi Village and post, Tindivanam Taluk, Villupuram District within a stipulated time.

For Petitioner : Mr.J.Agni Selvaraju

For Respondents : Mr.A.N.Thambidurai for R1 to R6
Special Government Pleader
Mr.J.Karthikeyan for R7

O R D E R

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

Heard both sides. No counter is filed on behalf of the Respondents 1 to 6.

2. According to the Petitioner, there is a street in Olakkur Melpathi Village & Post, Tindivanam Taluk, Villupuram District, as Railway Station Road and the total extent of the road is around One Kilometer and belongs to State Highways Department. As a matter of fact, the Railway Station Road comprising old Survey No.201/81 and its Re-Survey No.318/2 is located nearby residents of the village.

3. The case of the Petitioner is that the 7th Respondent had encroached the said Highways Department's Land by putting hut for cattle feed. The encroached land is available in the corner place of the public road and as such, the public at large is facing difficulty to cross the road and frequently accidents take place because of the illegal encroachment made by the 7th Respondent.

4. At this stage, Learned Counsel for the Petitioner brings it to the notice of this Court that on 17.11.2015, the 6th Respondent addressed a communication to the 5th Respondent, for giving reply under the Right to Information Act, 2005. On a perusal of the information obtained, it came to light that the 7th Respondent had encroached the land belonging to the Highways Department and the same is indicated in FMB Map as 'Public Road' and therefore, the Petitioner, on 08.02.2016 sent a representation to the Respondents 1 and 6 to remove the encroachment of public road and make the public road an encroachment free one.

5. The 6th Respondent on 15.02.2016 had forwarded the Petitioner's representation to the 5th Respondent to take necessary action to remove the illegal encroachment on public road made by the 7th Respondent. Ultimately, a Final Show Cause Notice was issued by the 5th Respondent to 7th Respondent on 16.06.2016 to remove the encroachment in question, but, not removed the encroachment till 27.06.2016. Thereafter, the Petitioner on 30.06.2016 had received a letter from the 5th Respondent stating that after necessary correction in

F.M.B.Register, necessary action will be taken. Till date, the grievance of the Petitioner is that no action has been taken to remove the illegal encroachment made by the 7th Respondent. Another representation was made by the petitioner on 02.11.2016 before the Respondents 1, 3 and 6 to remove the encroachment on public and the same is pending till date. Hence, the Petitioner has filed the present Writ Petition seeking for necessary direction being issued to the Respondents 1 to 6 to remove the encroachment in Railway Station Road in Old Survey No.201/81 and its Re-Survey No.381/2 Measuring 0.27.5 acres situated at Olakkur Melpathi Village and Post, Tindivanam, Villupuram District within the time to be determined by this Court.

6. Per contra, it is the submission of the Learned Special Government Pleader appearing for the Respondents 1 to 6 that Survey No.318/5 [which is inclusive of 318/2] belongs to Highways Department and therefore, it cannot be measured in FMB and that apart, the 7th Respondent was directed to prefer an appeal within 30 days before the Sub-Collector, Tindivanam and these things were made quite clear by the 6th Respondent / Tahsildar's proceedings dated 11.07.2017 (which was communicated to the 7th Respondent)].

7. However, the Learned Counsel for the 7th Respondent submits that for the property in question, patta was issued to and in favour of the Petitioner and that the 7th Respondent had not preferred any appeal as against the present impugned proceedings of the 6th Respondent / Tahsildar's Proceedings dated 11.07.2017. Furthermore, the Learned Counsel for the 7th Respondent draws the attention of this Court to the fact that the 7th Respondent, on earlier occasion, filed W.P.No.1235 of 2018 seeking for a Writ of Mandamus being issued to quash the order of the Tahildar, Dindivanam, Villupuram District Notice dated 11.07.2017 and this Court, passed an order directing the 7th respondent (Writ Petitioner in W.P.No.1235 of 2018] to prefer an appeal before the competent authority and the 7th Respondent is to prefer an Appeal as instructed by this Court in its order in W.P.No.1235 of 2018 and very soon the 7th Respondent will prefer an appeal before the competent authority concerned.

8. In this connection, it is relevant for this Court to make a significant mention that the 6th Respondent / Tahsildar had addressed a communication to the Assistant Divisional Engineer of Highways Department / 5th Respondent in Na.Ka.A4/1047/2016 dated 15.02.2016 to the effect that the 7th Respondent had obtained a fake patta in respect of Survey No.318/5 at Olakur Highways and had constructed a cattle shed and the shed is being used for keeping haystack, dumping garbage and thereby committed encroachment and as such, the 6th Respondent / the Tahsildar, Tindivanam Taluk, Villupuram District made a request

to the 5th Respondent / Assistant Divisional Engineer of Highways Department to take further action in the concerned matter.

9. Be that as it may, in view of the fact that the 7th Respondent had encroached the subject land belonging to the State Highways Department and also in view of the candid communication of the 6th Respondent / Tahsildar's Proceedings dated 11.07.2017 to the effect that the since the 7th Respondent had encroached highways land, the FMB measurement could not be effected and moreover, in Sl.No.3 of the 6th Respondent's proceedings dated 11.07.2017, it is made quite clear that the patta granted to others, namely, in the Approximate Land Tax Patta, the name of the District is mentioned as Villupuram Ramasamy Padayachiyar, but in respect of the 7th Respondent's patta, which was given to him, it is mentioned as Villupuram Ramasamy Padayachiyar and also in the Natham Land Tax cum Adangal, entries were effected by scrapping the name Pillaiyar in Pillayarkoilpatti and in short, the correction was made as Pillaiyarkoilpatti and for making this correction, no counter signature of the surveyor is found.

10. In view of the clear cut communication of the 6th Respondent's Proceeding dated 11.07.2017 addressed to the 5th Respondent / Assistant Divisional Engineer, this Court, comes to an inescapable and irresistible conclusion that the encroachment committed by the 7th Respondent in Re-Survey no.318/2 is to be removed by him voluntarily within a period of one month from the date of a receipt of copy of the order. Before parting with the case, this Court, makes it quite clear that if the 7th Respondent is not removing the encroachment in the land belonging to the State Highways Department, then, the 5th Respondent is directed to take further action without any haziness or hesitation.

With the aforesaid observation(s) and direction(s), the Writ Petition is disposed of. No costs.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

ssd

To

1. The District Collector,
Villupuram,
Villupuram District - 605 602
 2. The Revenue Divisional Officer cum
Sub Collector, Tindivanam,
Villupuram District- 604 001
 3. The Chief Engineer,
Construction and Maintenance Wing
State Highways Department,
Chepauk, Chennai - 600 005
 4. The Divisional Engineer,
Construction and Maintenance Wing,
State Highways Department
Villupuram.
 5. The Assistant Divisional Engineer
Construction and Maintenance Wing,
State Highways Department,
Tindivanam, Villupuram District
 6. The Tahsildar,
Tindivanam Taluk,
Villupuram District - 604 001
- +1cc to Mr.J.Karthikeyan, Advocate, S.R.No.6088
- +1cc to the Government Pleader, S.R.No.6195

RRK(14/02/2018)

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