

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.No.14386 of 2018

P.Ravi

...Petitioner

Vs.

- 1.The Assistant Divisional Engineer,
Construction & Maintenance,
State Highways Department,
Near Travellers Bungalow,
Gummidipoondi, Thiruvallur District.
- 2.The Assistant Engineer,
State Highways Department,
Construction & Maintenance
Near Travelers Bungalow,
Gummidipoondi, Thiruvallur District.
- 3.The Tahsildar,
Gummidipoondi Taluk,
Thiruvallur District.
- 4.The Superintendent of Police,
Master Plan Complex,
Tiruthani Main Road, Thiruvallur - 602 001.

5.Mr.M.Moorthy

...Respondents

PRAYER:

Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the Respondents 1-3 to remove the encroachments made by the 5th respondent on the State Highway, passing through Gummidipoondi Town, Thiruvallur District in front of S.No.234/1 BIA & 215, Pethikuppam Village, Gummidipoondi Taluk, Thiruvallur District, and also direct the 4th Respondent to provide adequate police protection at the time of removing the encroachments within such time as may be fixed by this Honourable Court.

For Petitioner : Mr.M.R.Gokul Krishnan
For Respondents : Mr.A.N.Thambidurai, Spl GP
for R1 to R4

ORDER

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

By consent, the writ petition is taken up final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice for the respondents 1 to 4.

2. The petitioner on an earlier occasion, had approached this Court by filing WP.No.21728 of 2017, praying for the issuance of writ of Mandamus directing the respondents 1 and 2 who are also arrayed as respondents 1 and 2 herein, to forthwith remove the encroachment of the 5th respondent herein on the State Highway, Gummidipoondi Town, Thiruvallur District in front of S.No.234/1B1A & 215, Pethikuppam Village, Gummidipoondi Taluk, Thiruvallur District within a stipulated time as fixed by this Court and this Court vide final order dated 28.08.2017 had granted liberty to the petitioner to invoke the provisions of the Right to Information Act and to obtain information and thereafter to workout his remedy. Accordingly, the petitioner has got information under the Right to Information Act and approached the 2nd respondent and the 2nd respondent vide Memo dated 04.12.2017 has sent a notice to the 5th respondent stating that inspection was carried out and land measuring to an extent of 60 sq.feet in S.No.234/1B1A, Pethikuppam Village as well as land belonging to National Highways admeasuring to an extent of 320 sq.feet are in encroachment and therefore, action to be taken under the Provisions of Tamil Nadu Highways Act, 2001.

3. The petitioner would further state that the 5th respondent had also responded to the said notice and prayed for some time to vacate the place and thereafter, the 2nd respondent has sent a communication to Thiruvallur District. Paneer and Balaji, who are said to be the Tenants under the 5th respondent for removal of encroachment and also requested the 3rd respondent as well as the Jurisdictional TANGEDCO official, to render necessary assistance. Despite that no appropriate action has been taken on the part of the respondents against the 5th respondent and hence the petitioner is constrained to approach this Court by filing this writ petition.

4. Mr.R.Gokul Krishnan, learned counsel appearing for the petitioner has invited the attention of this Court to the typed set of papers and would submit that despite the fact that the 5th respondent has committed an act of encroachment on the said

Highway, appropriate and effective action has not been taken against him and tenants namely Thiruvallarkal. Paneer and Balaji and therefore the petitioner is left with no other option except to move this Court by filing this writ petition seeking appropriate remedy.

5. Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents 1 to 4 would submit that necessary and immediate action will be taken to remove the encroachments by following the due process of law.

6. This Court has considered the rival submissions and also perused the materials placed before it.

7. At this juncture, it is relevant to extract Section 28 of Tamil Nadu Highways Act, 2001:

'28.Prevention of encroachment - (1) The Highways Authority or any person authorised by it in this behalf shall, at such time as may be may be considered necessary, conduct such checks and periodical inspection of the highway boundaries, with the view to ensure the prevention of unauthorised encroachment and the removal of such encroachment.

(2) The Highways Authority or any person authorized by it in this behalf, may--

(i) remove, without any notice, any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching the highway or in any area where the construction or development of a highway is undertaken or proposed to be undertaken;

(ii) remove any immovable structure, whether permanent or temporary in nature, encroaching the highway or in the area vested with Government under this Act, after issuing a show cause notice against such removal, returnable within a period of seven days from the date of receipt thereof:

Provided that any representation received within the time-limit shall be considered by the authority or officer concerned before passing final orders. '

8. The fact remains that the 2nd respondent had addressed a letter dated 14.03.2018 to the Junior Engineer, Operation and Maintenance, Tamil Nadu Electricity Board, Gummudipoondi as well as to the 3rd respondent to render necessary assistance for removal of encroachments and they are expected to provide the same to the 2nd respondent.

9. This Court taking into consideration of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, directs the 2nd respondent to follow the above said provision of law and thereafter remove the encroachments within a period of six weeks from the date of receipt of copy of this order and communicate the decision taken to the petitioner, 5th respondent and other encroachers, if any.

10. With the above direction, the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Assistant Divisional Engineer,
Construction & Maintenance,
State Highways Department,
Near Travellers Bungalow,
Gummidipoondi, Thiruvallur District.
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- 4.The Superintendent of Police,
Master Plan Complex,
Tiruthani Main Road, Thiruvallur - 602 001.

+1cc to Mr.K.Rajasekaran, Advocate, S.R.No.37459
+1cc to the Government Pleader, S.R.No.37885

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CS/03/07/18