

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2018

CORAM

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

Writ Petition Nos.14828 & 14829 of 2018
and W.M.P.Nos.17534 to 17537 of 2018

S.Saravana Perumal Petitioner in
W.P.No.14828/2018

S.Dhanasekaran Petitioner in
W.P.No.14829/2018

vs

The Assistant Engineer (Highways),
Construction and Manitenance,
Tambaram Division, Tambaram,
Chennai-600 042.

..... Respondent
in both W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the respondent related to the impugned notice dated 12.02.2018 in respect of the road between Marmalang Bridge to Irumpiliyur Road km 5/0-21/2 issued to the petitioner and to quash the same.

For Petitioners : Mr.R.Rajesh Vivekananthan

For Respondent : Mr.R.Udhaya Kumar,
Additional Government Pleader

COMMON ORDER

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

By consent, both the writ petitions are taken up and disposed of by this common order, as the point in issue has to be adjudicated as one and the same.

2. The petitioner in Writ Petition No.14828 of 2018 claims

to be the owner of the property admeasuring to an extent of 3 cents comprised in Survey No.16/1, Gowriwalkam Village, Tambaram Taluk, Kancheepuram District together with superstructure and electricity for commercial purpose and he claims ownership through a registered Settlement Deed bearing Doc.No.3399 of 2004 dated 31.03.2004 registered on the file of Sub Registrar Office, Tambaram.

2.1 The petitioner would further aver that earlier the revenue records stood in the name of his father and subsequently, it was mutated in his favour and now, he claims possession and enjoyment of the property.

2.2 The grievance expressed by the petitioner is that, all of a sudden, the respondent has issued the impugned notice dated 12.02.2018 alleging encroachment on both sides of the road marking of Marmalang Bridge to Irumpiliyur Road km 5/0-21/2 and challenging the illegality of the same, the petitioner has come forward to file this writ petition.

3. The petitioner in Writ Petition No.14829 of 2018 has also made a similar claim as that of the petitioner in W.P.No.14828 of 2018 and according to him, his father Shanmugavel Nadar was the owner of 3 cents of land comprised in S.No.16/1 in Gowriwalkam Village, Tambaram Taluk, Kancheepuram District and executed a registered Settlement Deed bearing Doc.No.3400 of 2004 dated 31.03.2004, registered on the file of the office of the Sub Registrar, Tambaram and after the settlement, he has mutated the revenue records in his name. However, to his shock and surprise, he was issued with the impugned notice dated 12.02.2018 by the respondent alleging encroachment of both sides of road marking of Marmalang Bridge to Irumpiliyur Road between km 5/0-21/2 and challenging the illegality of the same, the petitioner has come forward to file this writ petition.

4. The learned counsel appearing for the petitioners would submit that prior to the execution of the Settlement Deed, the father of the petitioners, viz., Shanumugavel Nadar, was in possession and enjoyment of the property in his own rights and by virtue of the said Deeds, they continued to remain in possession and the properties are also subjected to statutory levies and without affording any opportunity whatsoever to the petitioners, the respondent has concluded, as if they have encroached upon the road mark of the public road and therefore, prays for appropriate direction.

5. Per contra, Mr.R.Udhaya Kumar, learned Additional Government Pleader appearing for the respondent would submit that since action has been taken under the provisions of the Tamil Nadu Highways Act, 2001, the petitioners cannot have any

grievance and prays for dismissal of the writ petitions.

6. This Court has considered the rival submissions and also perused the materials placed before it. It is relevant to extract Section 28 of the Tamil Nadu Highways Act, 2001, which reads thus:-

"28.Prevention of encroachment. - (1) The Highways authority or any person authorised by it in this behalf shall, at such time as 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 authorised 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."

7. This Court has taken into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioners, directs the respondent to proceed in accordance with law as per the above said provision of the Tamil Nadu Highways Act, 2001 by issuing notices and after eliciting response from the petitioners, shall proceed in accordance with law and take appropriate action and such an exercise is to be completed within a period of 10 weeks' from the date of receipt of a copy of this order. The decision taken in that regard shall also be communicated to the petitioner and till such time, the respondent shall defer further decision as to the removal of the encroachment in pursuant to the impugned notice. It is also made clear that until the respondent carries out the exercises as ordered by this Court, the petitioner shall not create any third-party right in respect of the sites and superstructures in question and shall not alter the physical features also.

8. Accordingly, these writ petitions are disposed of. No costs. consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

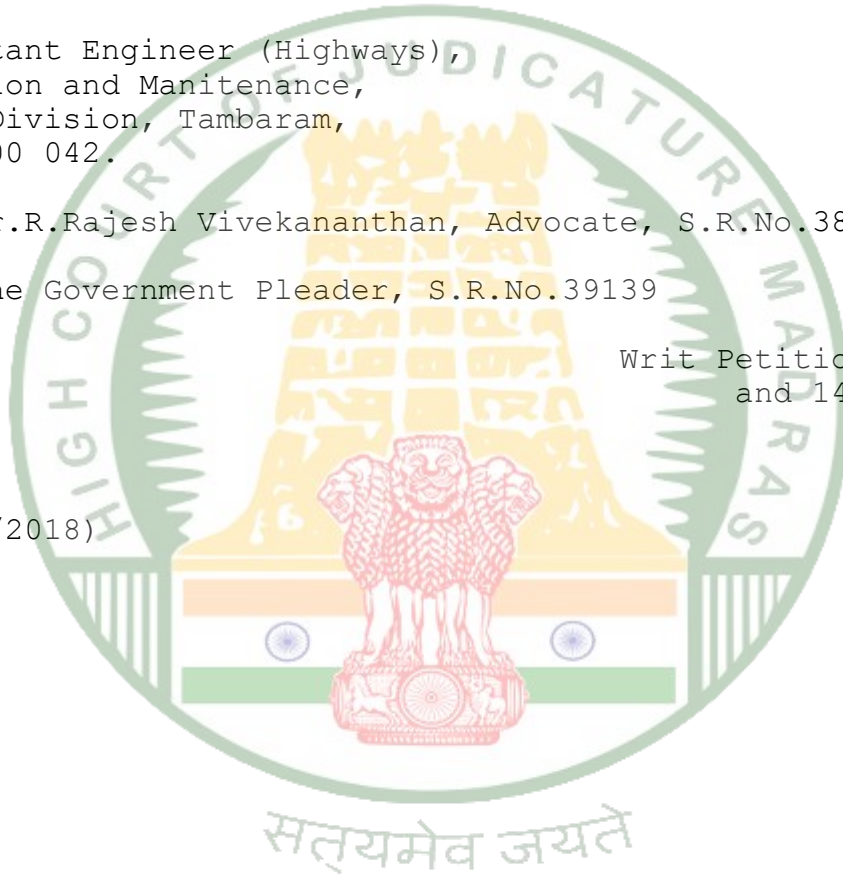
The Assistant Engineer (Highways),
Construction and Manitenance,
Tambaram Division, Tambaram,
Chennai-600 042.

+2cc to Mr.R.Rajesh Vivekananthan, Advocate, S.R.No.38614 & 38615

+1cc to the Government Pleader, S.R.No.39139

Writ Petition Nos.14828
and 14829 of 2018

VBA (CO)
GSP(19/07/2018)



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