

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN, J
&
THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN, J

W.P.Nos.15274 and 15275 of 2018
and W.M.P.No.18118 and 18119 of 2018

Munusamy ... Petitioner in
W.P.No.15274/2018

Devakatatcham ... Petitioner in
W.P.No.15275/2018

Vs.

- 1.The Project Director
The Tamil Nadu Road Sector
Project-II, TNMB Building
1st Floor, No.171 South
Kesavaperumalpuram
Greenways Road,
Raja Annamalaipuram
Chennai - 600 028.
- 2.The Superintending Engineer
The Tamil Nadu Road Sector
Project-II, TNMB Building
1st Floor, No.171 South
Kesavaperumalpuram
Greenways Road,
Raja Annamalaipuram
Chennai - 600 028.
- 3.The Zonal Engineer (Highways)
Tamil Nadu Road Sector Project-II
Kanchipuram, Kanchipuram District.
- 4.The District Collector
The Office of District Collector
Villupuram, Villupuram District.
- 5.The Special Tahsildar
Tamil Nadu Road Sector Project-II
Revenue Divisional Office Campus
Tiruvannamalai
Tiruvannamalai District.

6.Bashher Ahmed

... Respondents in
both W.Ps'

Prayer in W.P.No.15274/2018: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, forbearing the respondents 1 to 5 from evicting the petitioner from the land and building situated in 0.16 cents out of 1 hectare and 0.54 ares compromised in S.No.79, in these South of Mattapari Road, Illiyas land on the east, Poromboke land on the west and Solomon land on the north and situated at Ottampat Village, abutting Gingee, Ottampet Village, Mattaparai Road, Ginjee Taluk, Villupuram District without considering his objection dated 06.02.2018.

Prayer in W.P.No.15275/2018: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, forbearing the respondents 1 to 5 from evicting the petitioner from the land and building situated in 4 cents out of 1 hectare and 0.54 ares compromised in S.No.79, in these South of Munusamy and Lakshmikanthan house, Illiyas land on the east, Poromboke land on the west and Venkatachalapathy land on the north and situated at Ottampet Village, abutting Gingee, Ottampet Village, Mattaparai Road, Ginjee Taluk, Villupuram District without considering his objection dated 06.02.2018.

For Petitioner : Mr.G.Rajan
(In both W.Ps')
For Respondents : Mr.A.N.Thambidurai [R1 to R5]
(In both W.Ps')

COMMON ORDER

(Order of the Court was made by M.Sathyanarayanan.J)

By consent, these writ petitions are taken up together and disposed of by this common order, as the issue to be adjudicated is one and the same. Mr.A.N.Thambidurai, learned Special Government Pleader, accepts notice on behalf of respondents 1 to 5.

W.P.No.15274 of 2018

2. The petitioner claims that his father had encroached upon the land admeasuring to an extent of 0.16 cents out of 1 hectare and 0.54 ares comprised in S.No.79 at Ottampat Village, near Gingee, Villupuram State Highways and superstructure have also been put up and also carrying on agricultural activities. It is further averred by the petitioner that the sixth respondent, who is no more, had filed W.P.No.29486 of 2017 against the official respondents, the petitioner herein and one Devakatatcham praying for issuance of a writ of mandamus, directing the respondents 1

to 6 therein to consider and pass orders on his representation dated 22.07.2017 for illegal construction and encroachment made by the petitioner and one Devakatatcham. This Court, vide order dated 17.11.2017, directed the respondents 1 to 3 and 5, to put the petitioner as well as the respondents 6 to 8 therein on notice and thereafter, consider and dispose of his representation dated 22.07.2017, on merits and in accordance with law, within the stipulated time frame and acting contrary to the said order, attempts are being made to dispossess the petitioner without resorting to due process of law.

3. The learned counsel appearing for the petitioner would submit that the petitioner along with one Lakshmigandhan had filed O.S.No.29 of 2018 against the official respondents herein on the file of the Court of Principal District Munsif, Gingee praying for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the pathway poramboke in S.No.79, admeasuring to an extent of 0.16 cents out of 1 hectare and 0.54 ares at Ottampat Village, Gingee Taluk, and pending disposal of the suit, filed an application for ad-interim injunction in I.A.No.188 of 2018 in O.S.No.29 of 2018. The trial Court, vide order dated 21.06.2018, has taken note of the possession of the petitioner, ordered the maintenance of status quo till the disposal of the interlocutory application and despite the subsistence of the said order, attempts are being made to evict the petitioner from the land in question. Therefore, the petitioner is constrained to approach this Court by filing this writ petition.

W.P.15725/2018

4. The petitioner claims to be in possession of the landed property admeasuring to an extent of 1 hectare and 0.54 ares compromised in S.No.79, at Ottampat Village, which is located near to Villupuram State Highways and according to him, he is in possession and enjoyment of the land for very many years and a part of the land was also sought to be acquired for the extension of highways road and thereafter, since there was no more requirement of acquisition, the petitioner continues to remain in possession and enjoyment of the same. It is further averred by the petitioner that the sixth respondent, who is no more, had filed W.P.No.29486 of 2017 against the official respondents, the petitioner herein and one Devakatatcham praying for issuance of a writ of mandamus, directing the respondents 1 to 6 therein to consider and pass orders on his representation dated 22.07.2017 for illegal construction and encroachment made by the petitioner and one Devakatatcham. This Court, vide order dated 17.11.2017, directed the respondents 1 to 3 and 5 to put the petitioner as well as the respondents 6 to 8 therein on notice and thereafter, consider and dispose of his representation dated 22.07.2017, on merits and in accordance with law, within the stipulated time frame and acting contrary

to the said order, attempts are being made to dispossess the petitioner without resorting to due process of law. The petitioner, apprehending dispossession without resorting to due process of law, had filed O.S.No.48 of 2018 along with one Ganagamani and pending disposal of the suit, filed an application for ad-interim injunction in I.A.No.290 of 2018 in O.S.No.48 of 2018. The trial Court, vide order dated 21.06.2018, has taken note of the possession of the petitioner, ordered the maintenance of status quo till the disposal of the interlocutory application

5. The learned counsel appearing for the petitioner would submit that despite the subsistence of the interim order of Status quo in I.A.No.290 of 2018 in O.S.No.48 of 2018 on the file of the Court of Principal District Munsif, Gingee, attempts are being made to evict the petitioner from the land in question.

6. Though the official respondents are also arrayed as respondents/defendants, they are guilty of fully violating the said interim order and left with no other option, they are constrained to approach this Court by filing these writ petitions.

7. Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader, who accepts notice on behalf of respondents 1 to 5, would submit that the petitioners are indulging forum shopping and admittedly the suits in O.S.Nos.29 and 48 of 2018 filed for permanent injunction are pending on the file of the Court of Principal District Munsif, Ginjee and they claim to have the benefit of interim orders of status quo dated 21.06.2018 and the remedy open to them is to invoke Order XXXIX Rule 2-A of CPC, in the event of violation of the said interim orders and as such they cannot maintain these writ petitions. It is the further submissions of the learned counsel appearing for the petitioners that in terms of Section 63 of the Tamil Nadu High Ways Act, 2001 the Suit itself is not maintainable and prays for dismissal of these writ petitions.

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

9. The fact remains that for the very same relief, both the petitioners had filed O.S.Nos.29 and 48 of 2018 on the file of the Court of Principal District Munsif, Ginjee and obtained interim orders of status quo dated 21.06.2018 and according to the learned counsel appearing for the petitioners, the said order is still in subsistence for the reason that no further challenge has been made to the said orders. It is also the submission of the learned counsel appearing for the petitioners that in violation of the order dated 17.11.2017 passed in

W.P.No.29486 of 2017, attempts are also being made to dispossess the writ petitioners.

10. In the considered opinion of this Court that if the order passed by this Court as well as the interim orders of status quo passed by the Court of Principal District Munsif, Gingee are violated, the remedy open to the petitioners is to invoke the appropriate provision of law for redressal of their grievance and they cannot simultaneously prosecute these writ petitions.

11. It is also to be pointed out, at this juncture, that the Official Respondents in I.A.Nos.188 and 290 of 2018 in O.S.Nos.29 and 48 of 2018 on the file of the Court of Principal District Munsif, Gingee is also under obligation to abide by the said orders, unless it is set aside or modified by an appellate/Revisional forum.

12. In the light of the above facts and circumstances, this Court is of the view that these writ petitions are not maintainable and accordingly, stand dismissed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

vsm
To

1.The Project Director
The Tamil Nadu Road Sector
Project-II, TNMB Building
1st Floor, No.171 South
Kesavaperumalpuram
Greenways Road,
Raja Annamalaipuram
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2.The Superintending Engineer
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3.The Zonal Engineer (Highways)
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Kanchipuram, Kanchipuram District.

4.The District Collector
The Office of District Collector
Villupuram, Villupuram District.

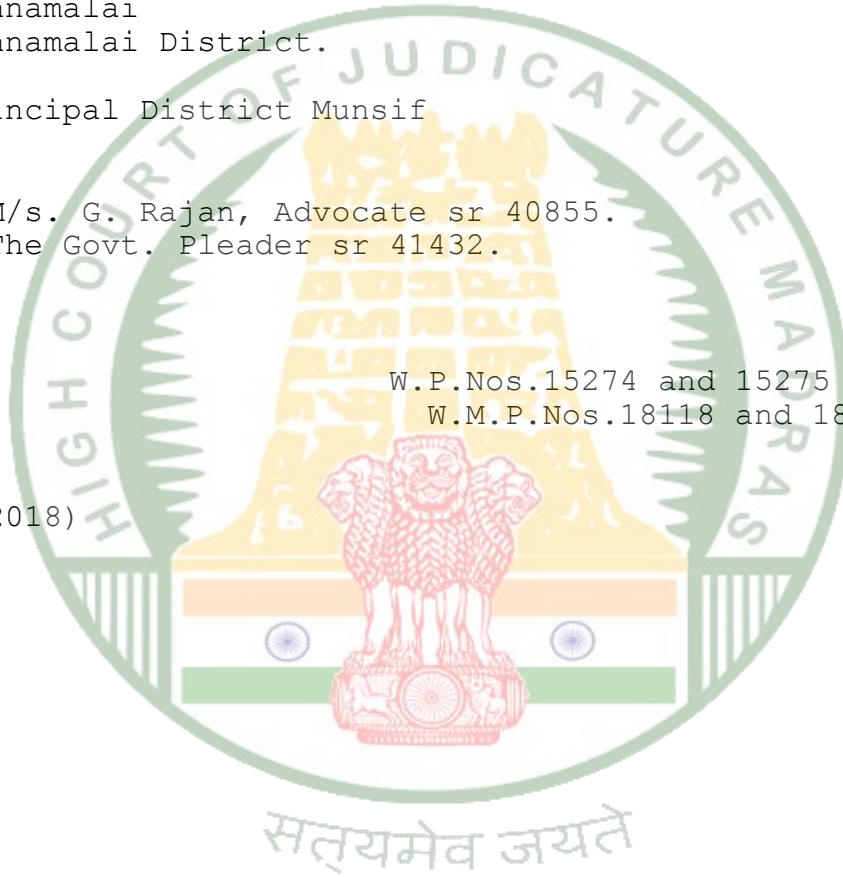
5.The Special Tahsildar
Tamil Nadu Road Sector Project-II
Revenue Divisional Office Campus
Tiruvannamalai
Tiruvannamalai District.

6. The Principal District Munsif
Gingee.

+1 CC to M/s. G. Rajan, Advocate sr 40855.
+1 CC to The Govt. Pleader sr 41432.

W.P.Nos.15274 and 15275 of 2018 and
W.M.P.Nos.18118 and 18119 of 2018

CP(CO)
SP(12/07/2018)



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