

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.06.2018

CORAM

The Hon'ble Mr.Justice M.DHANDAPANI

W.P.No.33341 of 2006
& connected MPs.

K.V.Rathinam

.. Petitioner

Versus

1. The Divisional Engineer(H)
cum-Highways Authority
Chennai City Road Division,
Chennai 600 006.
- 2.The Assistant Divisional Engineer(H)
Chennai City Road Sub-Division-I
Chennai 600 115.
- 3.The Assistant Engineer(H),
Chennai City Road Section-III,
Chennai - 600 015.
- 4.The Executive Engineer,
Highways Department,
Saidapet Division,
Chennai 600 028.
- 5.L.Ramalingam
(R5 impleaded as per order
dated 16.03.2007 of this court in
M.P.No.1 of 2007 in WP.No.33341/06)

.. Respondents

Writ Petitions filed under Article 226 of the Constitution of India, seeking to issue a Writ of Mandamus forbearing the respondents from demolishing the building constructed in the patta land in an extent of 5600 sq.ft comprised in Survey No.150/1 and 150/2 Korattur Village Ambattur Taluk Tiruvallur District.

For Petitioner : Mr.M.Arun
for Mr.K.Govi Ganasen

For R-1 to 4 : Mr.K.Ravi Kumar,
Additional Govt. Pleader

O R D E R

This writ petition has been filed seeking for a Mandamus forbearing the respondents from demolishing the building constructed in the patta land in an extent of 5600sq.ft., comprised in Survey No.150/1 and 150/2, Korattur Village, Ambattur Taluk, Tiruvallur District.

2. The case of the petitioner is that the petitioner got introduced with one Ramalingam and the said Ramalingam informed him that he is the owner of the property and he is willing to sell the same to the petitioner. Believing the words of the said Ramalingam, the petitioner entered into a sale agreement with him on 31.08.1998 for a sale consideration of Rs.5,75,000/- per ground. The petitioner also paid a total sum of Rs.10,00,000/- and taken possession of the property and had put up construction on the same. The construction was also assessed by the Municipal authorities and the petitioner is also paying tax regularly. The said Ramalingam had not handed over patta, chita and adangal and other documents of the property and the same were agreed to handed over at the time of balance sale consideration by both parties. While so, the said Ramalingam, filed a suit in O.S.No.142 of 2001 seeking for a permanent injunction restraining the petitioner herein from putting up construction in the said property. However, the said suit was decreed or ended in favour of the petitioner. Thereafter, at the instigation of the said Ramalingam, one P.Shanmugam, neighbouring land owner, filed a writ petition before this court in W.P.No.15169 of 2001 alleging that the construction put up by the petitioner was in his land. However, this Court based on the patta held that the petitioner had put up the construction on his own patta land.

3. Since the said Ramalingam had not taken any steps for completing the sale consideration, the petitioner filed Writ Petition in W.P.No.6655 of 2006 seeking for resurveying the land in S.No.150/1 and 150/2 of Korattur Village, Ambattur Taluk, Tiruvallur District. This court had directed the third respondent to make a spot inspection in the aforesaid writ petition however, the third respondent without doing so, had issued a notice to the petitioner on 22.03.2006 calling upon the petitioner to explain as why he should not be evicted from the said land. Aggrieved against the order of the third respondent, the petitioner filed the present writ petition.

4. Learned counsel appearing for the petitioner would submit that the petitioner having been entered into a sale agreement with the said Ramalingam and paid a huge amount as sale consideration. Thereafter, since the said Ramalingam raised civil litigation against the petitioner and this Court in W.P.No.15169 of 2011 had also observed that the petitioner was in possession of the property which is a patta land. Since already the possession of the property by the petitioner had been confirmed by an order of this Court, the third respondent without following due process of law, trying to evict the petitioner, which is illegal and arbitrary.

5. Learned Additional Government Pleader appearing for the respondents 1 to 4 by relying upon the counter affidavit would submit that the land in dispute is a Highway Poramboke land and the petitioner is illegally occupying the land by putting up construction on the same. The authorities, as per Section 28(2) of the Tamil Nadu Highways Act, 2001, has power to remove the encroachment. Hence, the show cause notice had been issued to the petitioner which is sustainable in law.

6. I have heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 to 4 and the counsel appearing for the fifth respondent.

7. Admittedly, the property is a Highway Poramboke. Though the petitioner claims that he entered into a sale agreement with one Ramalingam, he had not produced any document establishing his title over the property. If at all the petitioner is claiming any title over the property, his remedy lies elsewhere and approaching this Court under Article 226 of the Constitution of India does not warranted for the petitioner. In the present case, as per the directions of this Court in W.P.No.6655 of 2006, the authorities have made spot inspection on the property and had found that there is encroachment in the Highways road Poremboke and only subsequently, the impugned order of eviction was passed. In my view, the authorities have acted in accordance with law and the petitioner has no right to prevent the authorities to exercise their lawful duties. Hence, this writ petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS VII)

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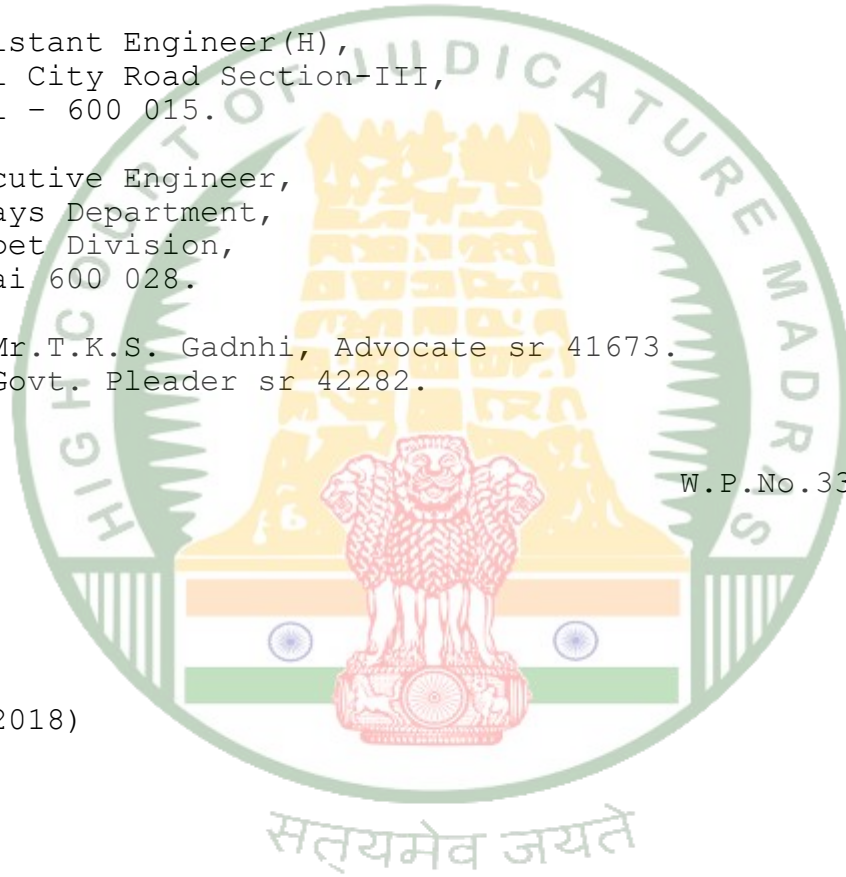
Sub-Assistant Registrar

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To

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cum-Highways Authority
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 - 4.The Executive Engineer,
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Saidapet Division,
Chennai 600 028.
- +1 CC to Mr.T.K.S. Gadnhi, Advocate sr 41673.
+1 CC to Govt. Pleader sr 42282.

W.P.No.33341 of 2006

SV(CO)
SP(19/07/2018)



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