

In the High Court of Judicature at Madras
Dated : 16.11.2018

Coram
The Honourable Mr.Justice M. VENUGOPAL
AND
The Honourable Mrs.Justice R. HEMALATHA

W.P.No.32833 of 2017

Pon.Saraswathi

....Petitioner

..vs..

1. The District Collector,
Namakkal District,
Namakkal.
2. The District Revenue Officer,
Namakkal Collectorate Office,
Namakkal.
3. The Revenue Divisional Officer,
Tiruchengode,
Namakkal District.
4. The Commissioner,
Tiruchengode Municipality,
Tiruchengode,
Namakkal District.
5. The Tahsildar,
Tiruchengode Taluk,
Namakkal District.
6. The Divisional Engineer
(Construction & Maintenance),
Highways Department,
Namakkal - 637 001.
7. The Assistant Director,
Highways Department,
Tiruchengode.

8. S.M. Murugesan

..Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus directing the Respondents 1 and 6 to consider the representation dated 18.05.2017 and to pass appropriate orders and consequently to remove the encroachment made by the 8th Respondent in S.Nos.70/2 and 70/3 in 1st ward of Seetharamapalayam, Tiruchengode Town, Namakkal District, which is situated on the State Highway No.86.

For Petitioner : Mr.L. Chandrakumar
for Mr.A. Saravanan

For R.1 to R.7 : Mr.S.N. Parthasarathy
Government Advocate

For R.8 : Mr.R. Marudhachalamurthy

ORDER

(Order of the Court made by M. VENUGOPAL, J.,)

Heard both sides.

2. Counter of the seventh Respondent is filed.

3. According to the Petitioner, the land admeasuring an extent of 2 cents in Survey No.70/2 and 1 cent in Survey No.70/3 in all measuring an extent of 3 cents of land in Seetharamapalayam Village, Tiruchengode Taluk, Namakkal District was assigned by the State Government to the 8th Respondent. At the time of assignment of land, certain conditions were mentioned in the assignment order itself. In fact, the land assigned was under the category of Landless Persons living below the poverty line.

4. The grievance of the Petitioner is that the land, in question, is to be utilised for dwelling purpose only and if there is any violation in regard to the conditions imposed, the same would result in cancellation of assignment, in question. However, the Eighth Respondent/assignee is leading a sophisticated life living in an independent house and having 5 acres of land and as such, he cannot be termed as a person, living below the poverty line.

5. It is averred in the Writ Petition that the Eighth Respondent had put up a commercial construction in the assigned land and let out the same for commercial go down and consequently, the Eighth Respondent has not only violated the condition specified under the assignment, but also encroached the State Highway land and is causing hindrances to the traffic by parking heavy vehicles on the highway to load and unload the

material to the heavy trucks dumped in the said lorry booking office cum go down and thereby causing heavy traffic in the said road, wherein surrounded by the Government School, Combined Court Complex, Primary Health Care Center and way to Sankari Railway Station. Furthermore, this is the main road in Tiruchengode Town and busiest road in that locality.

6. It is represented on behalf of the Petitioner that the Highway Department had commenced Road widening Process due to over traffic and congested situation in the State Highway No.86 leading to Tiruchengode-Sankari main Road and the road widening work is being stalled by the Eighth Respondent in the portion of area in Survey No.70 which is under the commercial use of the Eighth Respondent.

7. Since the Eighth Respondent had constructed six shops and rent out the same for commercial purposes like lorry booking office and go downs etc., which is utter violation of the terms and conditions stipulated under the order of assignment, the main road has become a narrow one in certain places although it was widened in all other places as per the approval of the State Government.

8. That apart, the fourth Respondent had passed a Resolution in Tiruchengode Municipality vide Resolution No.641 dated 24.11.2014 to remove the said encroachment and to widen the main road pursuant to the road widening process already carried out in the said State Highways No.86.

9. The Petitioner in his Writ Petition had proceeded to state that the Fourth Respondent/The Commissioner, Tiruchengode Municipality could not carry out the drainage construction work in the main road because of the encroachment made by the Eighth Respondent in the State Highway No.86. As such, general public of Tiruchengode made a representation to the authorities concerned and in particular, to the Respondents 1 to 7, whereby and where under, a request was made to complete the road widening work in Tiruchengode-Sankari Main Road (S.H.No.86) and also complete the drainage construction work. In fact, the Petitioner also addressed a communication dated 27.03.2017 to the First Respondent with a request to take appropriate action in respect of the encroachment made by the Eighth Respondent.

10. The Petitioner has come out with a plea in the Writ Petition that the fifth Respondent/The Tahsildar, Tiruchengode Taluk through his Proceedings dated 29.04.2017 had addressed a communication to the seventh Respondent/The Assistant Director, Highways Department, Tiruchengode by mentioning the Petitioner's representation dated 27.03.2017 and confirmed the encroachment made by the Eighth Respondent in the said Highways as per the confirmation made by the Municipality Surveyor based upon the

survey made by him pertaining to the encroachment of the land.

11. The prime plea of the Petitioner is that the assignment, in question, to and in favour of the Eighth Respondent is null and void in the eye of law. As a member of the Legislative Assembly for Tiruchengode Constituency, it is the duty cast upon the Petitioner to ventilate the grievance of the public who complained, due to which, the road widening work as well as the drainage construction work at Tiruchengode-Sankari Main Road (S.H.No.86) were stopped to a length of about 100 feet in the entire stretch. In fact, the Petitioner had addressed a representation dated 11.04.2017 to the Divisional Engineer, Highways Department/Sixth Respondent herein with a request to take appropriate action and to remove the encroachment made by the eighth Respondent in the interest of public.

12. Continuing further, the Petitioner has taken a stand in the Writ Petition that the sixth Respondent in his communication dated 25.04.2017 informed that the patta was issued in favour of the Eighth Respondent and further that, he had obtained permanent injunction in the Civil Court and as such, the patta issued in his favour and could not be cancelled as informed by the Fifth Respondent/Tahsildar.

13. Indeed, the Eighth Respondent's order of obtaining permanent injunction from the Civil Court is an unexecutable one and further that the patta issued by the authorities is a conditional one and if there is any violation or breach of condition, then the patta will be cancelled and that the Eighth Respondent's right over the property shall get ousted.

14. Since the Petitioner had made a representation on his behalf and also on behalf of general public, he has filed the present writ petition, not only in his individual capacity but also in the interest of general public, who reside in the locality and therefore, he has filed the present Writ Petition having no personal interest and sought for passing of an order by this Court directing the Respondents 1 and 6 to consider the representation dated 18.05.2017 and to pass appropriate orders and resultantly, to remove the encroachment made by the 8th Respondent in S.Nos.70/2 and 70/3 in 1st ward of Seetharamapalayam, Tiruchengode Town, Namakkal District, which is situated on the State Highway No.86.

15. Per contra, it is the submission of the learned Government Advocate, appearing for the Respondents 1 to 7 that the fifth Respondent/The Tahsildar, Tiruchengode subdivided the Survey No.70 of Seetharamapalayam village into Survey Nos.70/1, 70/2 and 70/3 in the year 1974 itself and Survey No.70/1 is classified as 'road' in the revenue records. Moreover, Survey

Nos.70/2 and 70/3 were assigned to Eighth Respondent by the Fifth Respondent as per assignment order No.74/HSD/83 dated 16.04.1974 for already constructed houses.

16. At this juncture, it is represented on behalf of the Respondents 1 to 7 that the Eighth Respondent filed a civil suit in O.S.No.697 of 1982 on the file of learned District Munsif, Tiruchengode, seeking the relief of declaration of his title over the properties comprising of Survey Nos.70/2 and 70/3 and sought relief of permanent injunction restraining the Defendants from disturbing the plaintiff's peaceful possession and enjoyment of the properties. The said suit came to be decreed on 21.08.1989.

17. In effect, the stand of the Respondents 1 to 7 is that as per the Town Survey settlement, the Survey Nos.70/2 and 70/3 of Seetharampalayam village belonged to the Eighth Respondent situate in Ward A, Block No.10, T.S.Nos.12 and 34 respectively of the third respondent/the Revenue Divisional Officer, Tiruchengode Municipality.

18. In a similar way, Survey No.70/1 belongs to Highways Department is now situate in Ward A, Block No.10, T.S.L.R.No.131 of Tiruchengode Municipality and in this regard, the concerned authorities are maintaining the revenue records.

19. The Learned Government Advocate appearing for the Respondents 1 to 7 brings to the notice of this Court that one Subramanian and others have presented an application before the third respondent/the Revenue Divisional Officer, Tiruchengode Taluk, Namakkal District for cancelling the patta issued in respect of the properties situate in Survey Nos.70/2 and 70/3 of Seetharampalayam village to the Eighth Respondent and in respect of the Eighth Respondent, after conducting full fledged enquiry, the third Respondent/the Revenue Divisional Officer, Tiruchengode had dismissed the said Petition vide order No.N.M.N.864/2014 dated 28.08.2014.

20. That apart, it is also the crystalline of the Respondents 1 to 7 that the subject matter of the properties comprised in Survey Nos.70/2 and 70/3 of Seetharampalayam village corresponding to Ward A, Block No.10, T.S.Nos.12 and 34 are not related to the Highways Department and that the Eighth Respondent is also the owner of the patta issued by the Fifth Respondent/The Tahsildar, Tiruchengode Taluk and added further, the judgment and decree passed by the trial Court in O.S.697/1982 dated 28.08.2014 are in favour of the Eighth Respondent.

21. The Learned Government Advocate appearing for the Respondents 1 to 7 points out that the Eighth Respondent had not made any encroachment in T.S.L.R.No.131 and further that, the seventh Respondent had carried out the road widening work in Survey No.70/1 of Seetharampalayam village corresponding to Ward A, Block No.10, T.S.L.R.No.131 of Tiruchengode Municipality.

22. To put it precisely, in T.S.L.R.Nos.12 and 34 of Tiruchengode Municipality, the plea of the Respondents 1 to 7 is that the Highways Department has no right, title or interest and that the revenue records in respect of the properties in Survey Nos.70/2 and 70/3 of Seetharampalayam village corresponding to Ward A, Block No.10, T.S.L.R.Nos.12 and 34 respectively maintained by the fourth Respondent/the Commissioner, Tiruchengode Municipality and the fifth Respondent/The Tahsildar, Tiruchengode Taluk do stand registered in the name of the Eighth Respondent and as such, she is not the encroacher of the properties comprised in Survey Nos.70/2 and 70/3, in which, the Respondents No.6 and 7 have no right, title or interest over the same.

23. The Learned Counsel appearing for the Eighth Respondent submits that as against the Eighth Respondent, on earlier occasion, one Nr.R. Subramanian filed a Writ Petition bearing W.P.No.26876 of 2014, wherein, a prayer was made for passing an order by this Court directing the Respondents 1 to 5 therein to acquire the land of the Eighth Respondent herein (who figured as sixth Respondent) in respect of Survey Nos.70/2 and 70/3 in 1st Ward at Seetharampalayam, Tiruchengode Town, Namakkal District by following due process of law for widening the State Highways No.86, by considering her representations dated 02.07.2014 and 08.08.2014 and also considering the Resolution No.641 dated 24.07.2014 passed by the fourth Respondent/The Commissioner, Tiruchengode Municipality and the said Writ Petition was ultimately dismissed as withdrawn, but without costs.

24. In the said Writ Petition, the Division Bench of this Court had clearly made an observation that the Writ Petition (W.P.No.26876 of 2014) filed by the Petitioner therein, was clearly a motivated one.

25. On a careful consideration of respective contentions and in view of the clear cut stand taken on behalf of the Respondents 1 to 7 that the Eighth Respondent has not made encroachment in T.S.L.R.No.131 and further that, he is not an Encroacher of the properties in Survey Nos.70/2 and 70/3, in which, the Respondents 6 and 7 have no right, title or interest over the same. Added further, this Court, keeping in mind the judgment and decree passed by the trial Court in O.S.697/1982 dated 28.08.2014 to and in favour of the Eighth Respondent, comes to a inescapable and irresistible conclusion that the

Petitioner is not entitled to claim the relief sought for in the Writ Petition. Viewed in that perspective, the Writ Petition fails .

26. In fine, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The District Collector,
Namakkal District,Namakkal.
- 2.The District Revenue Officer,
Namakkal Collectorate Office,
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- 3.The Revenue Divisional Officer,
Tiruchengode,Namakkal District.
- 4.The Commissioner,
Tiruchengode Municipality,
Tiruchengode,Namakkal District.
- 5.The Tahsildar,
Tiruchengode Taluk,
Namakkal District.
- 6.The Divisional Engineer
(Construction & Maintenance),
Highways Department,
Namakkal - 637 001.
- 7.The Assistant Director,
Highways Department,
Tiruchengode.

+1cc to Mr.A.Saravanan, Advocate, S.R.No.78441
+1cc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.78818

W.P.No.32833 of 2017

KK(CO)

rrs 11/12/2018