

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.12.2018

PRONOUNCED ON : 18.12.2018

CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN
W.P.No.17801 of 2017

&

WMP.Nos.19306 & 19307 of 2017

S.Arasalingam ... Petitioner

Vs.

1.The Divisional Engineer,
Tamilnadu Highways Department,
(Construction and Maintenance),
Chengelpet Town,
Kancheepuram District.

2.The Assistant Divisional Engineer,
Tamilnadu Highways Department,
(Construction and Maintenance),
Chengelpet Town,
Kancheepuram District.

3.The Junior Engineer,
Tamilnadu Highways Department,
(Construction and Maintenance),
Chengelpet Town,
Kancheepuram District.

4.R.Venkatesan

(R4-implied as per order dated 02.01.2018

by MVJ & SVNJ in WMP No.29958 of 2017

in WP.No.17801 of 2017)

... Respondents

Prayer:

Petition filed under section 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus with a direction to call for the records pertaining to impugned order passed by the second Respondent dated 13.06.2017 issued under Section 28(2)(ii) of TN State Highways Act of

2001 and quash the same as illegal, arbitrary, violative of audi alteram partem and without jurisdiction and further forbear the Respondents from interfering with the Petitioner's possession of House sites measuring to an extent of 12 cents in Survey No.199/1 at Kalavakkam Village, Tiruporur Taluk.

For Petitioner : Mr.R.Veeramani
For Respondents : Mr.J.Pothiraj, Spl G.P.
for R1 to 3
Mr.Arivazhagan for R4

O R D E R

R.PONGIAPPAN, J.

The Petitioner has filed this Writ Petition seeking for issuance of a Writ of Certiorarified Mandamus directing to call for the records pertaining to the impugned order passed by the Second Respondent/ Assistant Divisional Engineer dated 13.06.2017 issued under Section 28(2)(ii) of TN State Highways Act of 2001 and quash the same as illegal, arbitrary.

2. Heard, Mr.R.Veeramani, Learned counsel for the Petitioner and Mr.J.Pothiraj, Learned Special Government Pleader for the Respondents 1 to 3 and Mr.Arivazhagan, Learned counsel for the fourth Respondent and perused the materials placed on record.

3. The father of the Petitioner (late).E.Subramani Nadar had been in possession and enjoyment of the House site for over 40 years in S.No.199 at Kalavakkam Village measuring to an extent of 12 cents situated on western side of Old Mahabalipuram Road. The said land in S.No.199/1 is originally understood to have been classified as 'tharisu'. During UDR scheme, it is reported to have been classified as 'natham'. From the date of his possession of a House site, it had always been an unobjectionable one. In the year 1983 itself, the Petitioner obtained Electricity Service connection for the House, bearing SC No.577-007-186. The Petitioner was working as a Agriculturist in a land situated at further west of said S.No.199/1. In the year 1999, the father of the Petitioner died leaving behind the Petitioner and his two other brothers by name Mr.S.Rajalingam and Mr.S.Sundaralingam. After the death of his father, the Petitioner alongwith the other brothers occupaid the said House site and constructed the Houses having asbestos roof. Separate Electricity Service connections also obtained in the name of the each individual. In the year

2005, the Veeranam Drinking Water Scheme was undertaken by the State Government of Tamilnadu. At that time, the Veeranam water pipelines were laid on the western side of OMR. On the further west, the House sites of the Petitioner and his Brothers are situated. In fine, the Veeranam pipelines and its service roads are sandwiched between OMR and their House sites. The manual pumping of Veeranam was constructed in front of the House belonging to the Petitioner. In the year 2006, by saying that the Petitioner is the encroacher in the State High way, the Second Respondent attempted to evict him from the place in which he is resided. There was an order passed in W.P.No.37848 of 2016 that the earlier order passed by the Respondents should be treated as show cause and permitted the Petitioner for raising objections. After receiving the material objections, the second Respondent passed an impugned order in which, he was directed to vacate the House now is in the occupation of the Petitioner.

4. Resisting the claim made by the Petitioner, the First Respondent filed a counter stating that Rajiv Gandhi Road(Chennai-Mamallapuram Road via Tiruporur) at 40/6 Kilometers on its left side, the Petitioner encroached the land belonging to the State Highway Department under S.No.199 to an extent of 386.68 Sp. meters. Since the said encroachment is in Chennai- Mamallapuram Road, it is necessary for the Department to widen the said road for the free flow of traffic. Only for the said purpose, the Petitioner was issued with the notice and after receiving an objection from the Petitioner now he again approached this Court by way of this writ petition.

5. The Fourth Respondent herein Mr.R.Venkatesan, being the owner of the land measuring to an extent of 1.67 acres comprised in S.No.17/1A situated at Kalavakkam Village, Thirupoorur Taluk, Kancheepuram District has stated that his property is situated abetting Rajiv Gandhi Salai having a road frontage of above 88 meters. Adjoining to the said property, there is a porambokku land, which is absolutely belongs to the Respondents 1 to 3. The writ Petitioner and the others had put up a hut and encroached upon the Government Porambokku land adjoining to their property.

6. The Learned counsel appearing for the Petitioner would contend that the Petitioner and his predecessor are in possession of petition mentioned property for the past 14 years for which, the revenue authorities are issued ''B'' memo notice which established the continuous possession of the Petitioner. Apart from that in ''A'' register maintained by the revenue authorities, the land in question was classified as '' porambokku'' and ''natham'' land. Further, the electricity service connection was also

obtained in the name of the Petitioner and his brothers. So, passing the order by the Respondents for evicting the writ Petitioner is not at all maintainable and not legally justifiable.

7. Per contra, the Learned Special Government Pleader appearing for the Respondents would submit that issuing B-memo does not confer any right over the property to the Petitioner. Further, in the 'A' register, the property now under challenge is classified as 'Road'. Therefore, the writ petition filed by the Petitioner is not maintainable.

8. Section 18 of the Tamilnadu Highways Act 2001, speaks about the power procedure to fix the Highways boundary, building line/ contrary line etc and Sub-Section (2) mandates notice to be given to all persons likely to be affected by such notification to make objections or situation if any in writing etc. Sub-Section (4) also states that the Government in consultation with State Highways authorities and having regard to the situation or the requirements can fix different building line/contrary line for such Highway or reverting from situation of such building line or contrary line are from the materials. Further, the line in question is classified as 'Government porambokku', the Respondents may not have any right to take action under the provisions of the Tamilnadu Highways Act and the Rules framed therein.

9. Moreover, Section 26 of the Tamil Nadu State Highways Act, 2001 deals with 'Prevention of unauthorised occupation of highway'. Section 27 of the Act relates to 'Power to cancel permission'. Section 28 of the Act pertains to 'Prevention of encroachment'. Section 29 refers to 'Recovery of cost of removal of encroachment'.

10. At this stage, this Court aptly points out that Section 28(2)(ii) of the Tamil Nadu State Highways Act, 2001 unerringly points out that any representation of the concerned person received well within the time limit, shall be considered by the Authority or Officer concerned before passing final orders.

11. In the said circumstances, as per the copy of the 'A' register now produced by the Respondents and the Village Adungal record, S.No.199/1 mentioned as Government land and particularly, mentioned as 'Pathai'. Further, the entire extent in S.No.199/1 was given to State Highways Department by making relevant entries in the revenue records and the same was notified in the Government Gazatte as per the powers conferred under Section 3 of the Tamilnadu Highways Act 2001.

12. In pursuance of the order passed by this Court, the Tahsildar, Thiruporur had also conducted a field inspection and the measurement with regard to the above Survey numbers and furnished a report confirming that S.No.199/1 is the encroached one. So, the relevant records submitted by the Respondents clearly would disclose that S.No.199/1 is classified as ''Pathai'', only the sub-division No.2 is classified as ''Village natham''. Since, the land in question is classified as a ''pathai'', there is a provision is available to the Respondents to initiate action under the provisions of Highways Act.

13. The Learned counsel appearing for the Petitioner would further contend that the Petitioner and his predecessor are issued with ''B'' memo for the past 40 years. In the said circumstances, it is unfair on the part of the first and the second Respondents to evict the Petitioner after constructing permanent structure in the said land. In this aspect, it is relevant to see the Madras Land Encroachment Act III of 1905. Section 3 of the said Act, which reads as follows:

3.Any person who shall unauthorisedly occupy any land which is the property of Government shall be liable to pay by way of assessment:-

(i)If the land so occupied forms an assessed survey number or part thereof, the full assessment of such number for the whole period of his occupation or a part thereof proportionate to the area occupied, as the case may be, provided that, for special reasons, the Collector or subject to his control the Tahsildar or Deputy Tahsildar may impose the full assessment of such number or any lesser sum irrespective of the area occupied.

(ii)If the land so occupied be unassessed, an assessment on the area occupied calculated for the same period at the rate imposed on lands of a similar quality in the neighbourhood, or at the highest dry or wet rate of the village as the case may be, or when no such rates exist in such manner as may be prescribed in rules or orders under Section 8.

Provided that payment of assessment under this section shall not confer any right of occupancy.

Further, following the said Act, with regard to the unauthorised occupation of the Government land, the Government has passed the Revenue Standing Order, in which, Order 26, Clause 11, reads as follows:

11. Roads and streets which do not vest in a local board or municipality-The charge of roads or streets which do not vest in a local board or municipality, and of lands classified as road or path poramboke which lie beyond the recognized limits, or beyond what the Collector may determine to be the reasonable limits, of a public road or street vested in a local board or municipality, devolves upon the revenue authorities of the district, whose duty it is to suppress unauthorised occupation thereof, when objectionable. In dealing with such lands all possible future necessities, whether of Government or of the public, should be kept sedulously in view. The existing settlement registration of such public roads as poramboke should not however be changed by the Collector without giving the local body concerned an opportunity of showing cause why such change should not be made.

So based on the above two provisions, even though a person who is possessed with Government land for more than 30 years is not entitled to claim any 'Adverse possession' based on the issuance of the 'B' memo in the year 1983.

14. It is to be pointed out that ordinarily, the unlawful and enjoyment of a public property without making necessary payment towards fees/charges etc. is a clear case of 'Unjust Enrichment' and also against 'Public Interest'.

15. The present petitioner earlier filed W.P.No.37848 of 2016 assailing the impugned order passed by the Second Respondent dated 14.10.2016 (issued under Section 28(2)(ii) of the Tamil Nadu State Highways Act, 2001) and on 01.11.2016, this Court had directed the Petitioner to submit his response within seven days from today. Further, on receipt of the Reply to the Show Cause Notice by the Petitioner, the Authorities were directed to proceed in accordance with Law and pass necessary orders one way or the other.

16. It appears that the Petitioner had submitted his detailed response on 07.11.2016 before the Second Respondent. However, the Second Respondent had not passed necessary orders based on the response submitted by the Petitioner dated 07.11.2016. It appears that the 2nd

Respondent had issued the removal of encroachment notice dated 13.06.2017 (under Section 28(2)(ii) of the Tamil Nadu Highways Act, 2001) to the Petitioner requiring him to remove the encroachment on his own volition, failing which, he was informed that the said encroachment would be removed and the expenses so incurred thereto was recovered from him, besides this, articles would be sold in Public Auction and that the money would be remitted in Government accounts.

17. The Petitioner had submitted his detailed Reply dated 21.06.2017 (enclosing a copy of the Order dated 01.11.2016 in W.P.No.37848 of 2016). The Petitioner has filed the present Writ Petition before this Court on 10.07.2017.

18. A perusal of the impugned notice dated 13.06.2017 issued by the Second Respondent that there is no reference to the Reply of the Petitioner dated 07.11.2016, submitted by him, pursuant to the order passed by this Court in W.P.No.37848 of 2016. However, there is a reference to the Common Order passed by this Court in W.P.Nos.37848 & 37849 of 2016 (filed by the present Petitioner and one Uma) stating that the same were dismissed. But actually, they were disposed of with certain directions. Further, there is also a reference to the W.P.No.4772 of 2017 filed by one R.Venkatesan praying to remove the encroachment and the same was disposed of on 24.01.2017 (mentioned as 24.02.2017) by directing the Department to remove the encroachment.

19. However, considering the submissions made by the Learned Counsel on either side and in view of the fact that the Petitioner filed W.P.No.37848 of 2016 on earlier occasion, in which, on 01.11.2016 he was directed to submit his Reply within seven days from the date of order and that he had furnished his detailed Reply/Response on 07.11.2016 [for the impugned notice dated 14.10.2016 of the Second Respondent] and subsequently, the Second Respondent had issued the impugned notice dated 13.06.2017 to the Petitioner wherein there was no reference to the earlier Reply dated 07.11.2016 submitted by the Petitioner and also this Court, keeping in mind of the fact that the Petitioner had furnished a detailed representation dated 21.06.2017 to the Second Respondent, directs the Second Respondent to consider the Reply/Response/Representation of the Petitioner dated 07.11.2016 and 21.06.2017 and to pass a speaking Final Order, by dealing with the points raised by him, within a period of three weeks from the date of receipt of copy of this order. If the Second Respondent comes to a positive conclusion that the Petitioner is an 'Encroacher' in the subject property, then, necessary further steps may be taken for removal of the encroachment

to its logical end. In case, the Petitioner is a Landless and hapless person and if he fulfils the eligibility criteria for an Alternative site, then, the Respondents 1 to 3 shall provide him with an Alternative site as expeditiously as possible. In case of any resistance offered, it is open to the Authorities to seek the assistance of Law Enforcing Machinery to carry out the eviction of encroachment as per Law.

20. With the aforesaid observations and directions, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS vi)

//True Copy//

Sub Assistant Registrar

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To

1. The Divisional Engineer,
Tamilnadu Highways Department,
(Construction and Maintenance),
Chengelpet Town,
Kancheepuram District.
2. The Assistant Divisional Engineer,
Tamilnadu Highways Department,
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3. The Junior Engineer,
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(Construction and Maintenance),
Chengelpet Town,
Kancheepuram District.

+1cc to Mr. Arivazhagan , Advocate SR.No. 87861

W.P.No.17801 of 2017

ASK(02/01/2019)