



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2018

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

Writ Petition (MD) Nos.1735 to 1745 of 2018

and

W.M.P. (MD) Nos.1846 to 1867 of 2018

M.CHIDAMABRAM

... PETITIONER

IN WP (MD) No.1735/2018

T.PARAMAN

... PETITIONER

IN WP (MD) No.1736/2018

A.BOMMANAYAKKAR

... PETITIONER

IN WP (MD) No.1737/2018

C.SAMIKANNU

... PETITIONER

IN WP (MD) No.1738/2018

M.THANGARAJ

... PETITIONER

IN WP (MD) No.1739/2018

R.PANDITHURAI

... PETITIONER

IN WP (MD) No.1740/2018

C.CHITHAMBARAM

... PETITIONER

IN WP (MD) No.1741/2018

P.VALLATHU

... PETITIONER

IN WP (MD) No.1742/2018

C.KARUNAMOORTHY

... PETITIONER

IN WP (MD) No.1743/2018

P.SUBBURAJ

... PETITIONER

IN WP (MD) No.1744/2018

R.PALANICHAMY

... PETITIONER

IN WP (MD) No.1745/2018

Vs.

1. The District Collector,
Tirchy District.

2. The Assistant Divisional Engineer,
(Construction and Maintenance),

<https://hcservices.hc.mil.gov.in/hcservices/legislawyer/hcservices/>
Department, Opposite to Bus Stand,
Travellers Bungalow, Manapparai,
Trichy District.



3. Periyathambi @ Rengasamy

... Respondents in all cases

Common Prayer: Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the impugned order in Order No.334/2017/A2/தாக்கீது dated 22.01.2018 on the file of the second respondent and quash the same and further directing the second respondent to consider the representation of the petitioner dated 27.11.2017 as per Section 28(2)(ii) of the Tamil Nadu Highways Act, 2001 before passing the final order.

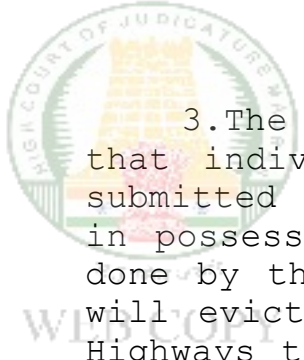
For Petitioner	: Mr.G.Prabhu Rajadurai
For Respondents 1 and 2	: Mr.V.R.Shanmuganathan Special Government Pleader
For Respondent No.3	: Mr.K.Kevin Karan (in all cases)

COMMON ORDER

(Order of the Court was made by **T.S.SIVAGNANAM, J**)

Heard Mr.G.Prabhu Rajadurai, learned counsel appearing for the petitioner, Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents 1 and 2 and Mr.K.Kevin Karan, learned counsel for the third respondent.

2.In these petitions, the impugned notice has been issued by the second respondent under the provisions of TamilNadu Highways Act, 2001. The petitioners are admittedly encroachers of Highways property. The third respondent herein filed the writ petition as Public Interest Litigation in W.P. (MD) No.10950 of 2017, bringing to light the encroachments made by the petitioners by way of shops in Survey Nos.111/2, 142 and 144 which is adjacent to the public main road, Puthanatham to Kalpatti, in Trichy District, Manapparai taluk, Elamanam Village by considering his representation. In the said writ petition, the third respondent did not implead the encroachers, viz., the petitioners herein. The Division Bench, by an order dated 18.07.2017, directed the respondents to consider the petitioner's representation as per law, after issuing notice to the alleged encroachers. The Court, while disposing of the writ petition, did not issue a direction to evict the encroachers, but gave liberty to the respondents to proceed, after issuing notice to the alleged encroachers. The land, being the Highways land, the second respondent has rightly initiated action under the provisions of the Highways Act and issued a showcause notice dated 22.11.2017 under Section 28(2)(ii) of the Act.



3.The learned counsel appearing for the petitioners submitted that individual representations/replies to the notice have been submitted stating that for a long number of years they have been in possession of the properties, the nature of business activity done by them, their economic status and an undertaking that they will evict and hand over possession of the land as and when the Highways takes a decision of road widening. The Second respondent has passed the impugned orders dated 22.01.2018, after taking note of the representations given by the petitioners.

4.The learned counsel for the petitioners contended that the second respondent, having issued notice under Section 28(2)(ii) of the Act and called for an explanation, and having received such explanation, has to consider the explanation given by the petitioners and pass appropriate orders. However, in the impugned order, there is no such consideration and mechanically the impugned order has been passed. Though at the first blush, the arguments advanced by the learned counsel for the petitioners appears to be impressive, on the close scrutiny of factual position, a different picture emerges. Admittedly, the petitioners are the encroachers of the Highways land. It is not for the petitioners to dictate terms to the Highways Department as to when they should be asked to vacate. The notice issued by the second respondent dated 22.11.2017, is an opportunity to the petitioners to produce the documents to establish their right, title or interest over the property. Admittedly, none of the petitioners in their respective reply have furnished any such document establishing their right, title or interest over the property in question. Admittedly, they are encroachers. However, they pleaded that on account of their economic status and long habitation in the area, they should be permitted to continue. Hence, this Court is of the view that the respondents are fully justified in issuing the impugned notice and in the absence of any documents produced by the petitioners to establish their right over the property, the manner in which the impugned notices were issued cannot be faulted.

5.For the above reasons, we are not inclined to interfere with the impugned proceedings. From the photographs furnished in the typed set of papers, we find some semi permanent structures, titled houses, pacca constructions, and buildings of ground plus first floor, etc. Therefore, it cannot be stated that all the petitioners are economically poor persons. In any event, the petitioners, having failed to establish their right over the property in question, cannot maintain a challenge to the impugned notice. However, taking note of the petitioner's claim that they have been in occupation for a quite long period of time, all the petitioners are directed to remove the encroachments before 30.06.2018, failing which, the second respondent is entitled to remove the encroachment departmentally and recover the cost of the same from the petitioners.



6. With the above observation, the writ petitions are dismissed. No Costs. Consequently, W.M.P. (MD) Nos.1846 to 1867 of 2018 are closed.

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Sd/-

Assistant Registrar(crl side)

Sub Assistant Registrar

To

1. The District Collector,
Tiruchy District.
2. The Assistant Divisional Engineer,
(Construction and Maintenance),
Highways Department,
Opposite to Bus Stand,
Travellers Bungalow, Manapparai,
Trichy District.

+1cc to Mr.G.Prabhu Rajadurai, Advocate Sr.No.56639

+1cc to Mr.K.Kevin Karan, Advocate Sr.No.56653

+1cc to The Spl. Government Pleader Sr.No.56707

MRN

VB/SKN/RSK/SAR1/20/04/2018/4P/6C

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20.03.2018