



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 15.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P(MD)No.3059 of 2018

and

W.M.P.(MD).Nos.3205 and 3206 of 2018

Susila

.. Petitioner

Vs.

1.The Assistant Divisional Engineer,
(Highways) Construction and Maintenance,
Vadipatti,
Madurai District.

2.The Assistant Engineer (Highways),
Construction and Maintenance,
Vadipatti Division,
Madurai District.

3.The Block Development Officer,
Kattakulam Village Panchayat,
Vadipatti Panchayat Union,
Vadipatti.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the impugned notice in Na.Ka.No.04/2018/EVA, dated 05.02.2018, issued by the 1st respondent and quash the same as it is arbitrary and illegal, in respect of his building bearing Door No.1/2A, Main Road, Kattakulam, Vadipatti Taluk, Madurai District.

For Petitioner	: Mr.R.Suriya Narayanan
For respondents	: Mr.V.R.Shanmuganathan,
1 & 2	Special Government Pleader
For 3rd respondent	: Mr.G.Anbarasan,
	Additional Government Pleader

ORDER

[Order of the Court was made by T.S.SIVAGNANAM, J.]

Heard Mr.R.Suriya Narayanan, learned counsel appearing for the petitioner, Mr.V.R.Shanmuganathan, learned Special Government Pleader, who accepts notice on behalf of the respondent Nos.1 & 2 and Mr.G.Anbarasan, learned Additional Government Pleader, who accepts notice for the 3rd respondent.



2. With consent on either side, the writ petition itself is taken up for final disposal.

3. The petitioner is aggrieved by the notice, dated 05.02.2018, issued by the second respondent, directing the petitioner to vacate the encroachment made by her within a period of 15 days from the land owned by the Highways Department. In the impugned notice, there is a reference to an order in W.P.(MD). No.19209 of 2017, dated 08.11.2017. Admittedly, the petitioner is not a party to the said proceeding and she obviously not aware of what is the direction issued in the said writ petition. The learned Special Government Pleader appearing for the respondents 1 and 2 produced a copy of the order dated 08.11.2017 passed by the Hon'ble Division Bench, headed by the Hon'ble Chief Justice. The said writ petition was filed as a Public Interest Litigation by one S.Babu to direct the respondents therein, including the Highways Department, which was, in fact, suo motu impleaded by the Hon'ble Division Bench, to remove the encroachments on either side of the Public Panchayat Union Road passing through Survey Nos.19/4, 21, 21/1, 22/2, 26/1, 31/1, 47/1, 55, 62, 73 and 93, situated in Kattakulam Village, T.Andipatti Post, T.Vadipatti Taluk, Madurai District. By considering the petitioner's representation, dated 12.09.2017, the Division Bench disposed of the writ petition, by order dated 08.11.2017, by issuing the following directions:

"2. The fourth respondent - Executive Engineer, Highways (Construction and Maintenance), Madurai shall treat the writ petition, including the documents enclosed in the typed set filed therewith as representation of the petitioner. The said authority shall cause inspection of the land in question and if it is found that there are unauthorised encroachments on public land, as alleged in the writ petition, immediate steps shall be taken for removal of the encroachments in accordance with law and upon notice to the alleged encroachers. The encroachments, if any, shall be removed in accordance with law, within three months from the date of communication of this order.

3. The writ petition is disposed of. No costs."

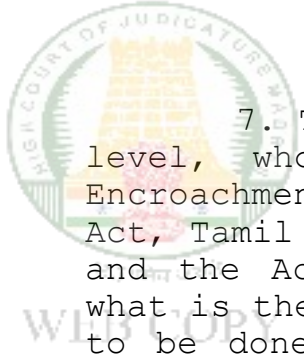
4. As could be seen from the above order, the Executive Engineer, Highways (Construction and Maintenance), Madurai was directed to treat the said writ petition (PIL), including the documents enclosed in the typed set, as the representation of the Public Interest Litigant. The authority was directed to cause an inspection of the land in question and if it is found that there are unauthorised encroachments on public lands, immediate steps shall be taken for removal of encroachments in accordance with law and upon notice to the alleged encroachers. Therefore, what has been directed to be done is to take note of the materials placed by the Public interest Litigant as a representation, cause an inspection of



the land in question and if it is found that there is unauthorised encroachments on public lands, notice should be issued to the alleged encroachers and then, removal of encroachment has to be done in accordance with law. It is not known as to whether the second respondent herein, who is the Assistant Engineer of the Highways (Construction and Maintenance) Department, is aware of the purport and intent of the direction issued by the Court in the said Public Interest litigation. The Court was concerned about unauthorised encroachments in Public property. At the same time, the Court was conscious of the fact that before terming a person as an unauthorised encroacher in public property, proper procedure has to be followed. For this purpose alone, an inspection was directed to be conducted and upon inspection, if the authority found that there is unauthorised encroachment on public land, then the encroacher should be put on notice. Unfortunately, the Executive Engineer, who was impleaded as the 4th respondent in the said writ petition, though would have received copy of the order passed by the Hon'ble Division Bench, has not issued proper direction to the second respondent, which has resulted in the impugned notice, which in effect is an eviction order.

5. The impugned notice has to be held to be unsustainable for more than one reasons. Firstly, it is not clear, as to when the survey was conducted, pursuant to the direction issued by the Hon'ble Division Bench and secondly, if the survey was conducted, clear details of the result of such survey should have been made known to the encroacher and only if the same is disclosed in the form of show cause notice, the alleged encroacher would be in a position to file an effective reply. For the above reasons, the impugned notice has to be held to be not in consonance with the direction issued by the Hon'ble Division Bench and it is an outcome of misreading of the order or in other words, on account of non application of mind.

6. We can take judicial notice of the fact that this Bench has been dealing with several public interest litigations, where the parties approach the Court alleging encroachment in public property, Highways property, water body, etc. and after considering the materials placed before the court and hearing the officials, direction is being issued to take action in certain cases. The encroachers may be several persons and only few parties would have been impleaded as respondents. Thus, the Court, while disposing of such writ petitions, administers due care and caution by asking the authorities to issue notice to all the alleged encroachers before any action is taken. However, it is not clear, as to whether the authorities have understood the order in proper perspective as invariably consequential action initiated is not in consonance with the relevant law or it is in violation of the principles of natural justice and then, all the alleged encroachers would approach the Court, the Court would have to interfere in such orders.



7. Therefore, it is high time that the officials at the lower level, who administer the provisions of the Tamil Nadu Land Encroachment Act, Tamil Nadu State Highways Act, National Highways Act, Tamil Nadu Protection of Tanks and Eviction of Encroachment Act and the Acts governing encroachments, should be sensitised as to what is the proper procedure to be followed. This sensitization has to be done with legally trained persons and the sensitization of higher officials alone will not give desired result. Therefore, we suggest that the Additional Advocate Generals and the Special Government Pleaders may address the District Collectors of the various Districts which fall within the jurisdiction of this Court, to convene a meeting of all the officials, who administer the provisions of the above mentioned enactments and other related enactments, in which the Additional Advocate Generals and the Special Government Pleaders should be requested to address the officials and sensitise them as to what is the correct legal provisions and the procedure to be adopted. If this sensitization training is imparted, it would not only result in restriction in the number litigations but would also ensure that the provisions of the various enactments are enforced in proper manner.

8. In the light of the above, we find that the impugned notice is a flawed. Thus, for the above reasons, the writ petition is allowed and the impugned notice is set aside and the matter is remitted back to the second respondent, who shall comply with the direction issued by the Hon'ble Division Bench in its order dated 08.11.2017 and conduct a survey by giving wide publicity in the area in question and based on the survey report, issue a fresh notice clearly indicating the extent of the alleged encroachment, grant a minimum period of 15 days time to the alleged encroachers to submit their objections and on objection being submitted and documents, if any, produced, the second respondent shall consider the documents and proceed in accordance with law, by passing a speaking order. The above direction shall be complied by the second respondent within a period of 45 days from the date of receipt of copy of this order. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(T&P)

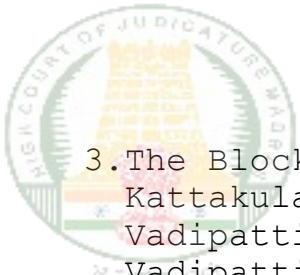
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Sub Assistant Registrar

To

1.The Assistant Divisional Engineer,
(Highways) Construction and Maintenance,
Vadipatti, Madurai District.

2.The Assistant Engineer (Highways),
Construction and Maintenance,
Vadipatti Division,
Madurai District.



3.The Block Development Officer,
Kattakulam Village Panchayat,
Vadipatti Panchayat Union,
Vadipatti.

4.Mr.Chellapandian,
Additional Advocate General No.3,
Madurai Bench of Madras High Court,
Madurai.

5.Mr.Pugalendhi,
Additional Advocate General No.7,
Madurai Bench of Madras High Court,
Madurai.

6.Mr.V.R.Shanmuganathan,
Special Government Pleader,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.R.Suriya Narayanan, Advocate SR.No. 49198

ORDER MADE IN
W.P (MD) No.3059 of 2018
15.02.2018

gcb
JM/SV MMS/SAR 1/26.02.2018/5P/8C