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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED 23.03.2018**

**CORAM**

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM  
AND**

**THE HONOURABLE MRS.JUSTICE R.THARANI  
W.P. (MD) .Nos.512 of 2018 and 21831 of 2017  
and  
W.M.P. (MD) .No.18128 of 2017  
in  
W.P. (MD) .No.21831 of 2017**

**W.P. (MD) .No.512 of 2018**

Santhappan

... Petitioner

Vs.

1. The Chief Engineer,  
Highways Department (Project)  
Sarthar Patel Road,  
Guindy, Chennai.

2. The District Collector,  
Tiruchirappalli District.

3. The Divisional Engineer,  
Project Division,  
National Highways Department,  
Ponnagar, Trichy.

4.Rajan Babu

... Respondents

**PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 3 to remove the encroachment made by the 4<sup>th</sup> respondent in Survey No.90, Sevalur Village, Manapparai Taluk, Trichy District pursuant to the order of the 3<sup>rd</sup> respondent passed in his proceedings Ka.No:ROB-LC-279/Ou.Po/dated 21.11.2017.

|                |                                        |
|----------------|----------------------------------------|
| For Petitioner | : Mr.T.Lenin Kumar                     |
| For R1 to R3   | : Mr.S.Dhayalan<br>Government Advocate |
| For R4         | : Mr.Ramanathan                        |

**W.P. (MD) .No.21831 of 2017**

Rajan Banu

... Petitioner

Vs.

1. The Assistant Engineer (Project),  
<https://hcservices.ecourts.gov.in/hcservices/>  
Highways Department  
Division IV, Trichy.



2. The Tahsildar,  
Manapparai Taluk,  
Manapparai, Trichy District.

3. The Special Tahsildar, (Survey Department)  
Town Settlement,  
Manapparai Unit,  
Manapparai Trichy District.

... Respondents

**PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of certiorari, to call for the records relating to the impugned proceedings in க.எண் ROB-LC279/உ.பா/dated 21.11.2017 passed by the 1<sup>st</sup> respondent and quash the same.

For Petitioner : Mr.A.N.Ramanathan  
For R1 to R3 : Mr.S.Dhayalan  
Government Advocate

**COMMON ORDER**

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

Heard Mr.T.Lenin Kumar, learned counsel appearing for the petitioner in W.P.(MD).No.512 of 2018 and Mr.AN.Ramanathan, learned counsel appearing for the petitioner in W.P.(MD).No.21831 of 2017, Mr.S.Dhayalan, learned Government Advocate appearing for the respondents 1 to 3 and Mr.AN.Ramanathan, learned counsel appearing for the fourth respondent in W.P.(MD).No.512 of 2018.

2.By consent, both the writ petition itself is taken up for final disposal.

3.The cases on hand are classical cases, where the fourth respondent Mr.Rajan Babu has been in possession of the land, which is stated to be acquired by the National Highways Department for forming a Service Road, by virtue of Court orders. The lands which were acquired by the National Highways Department, was comprised in T.S.No.90 classified as 'Natham land' measuring an extent of 45.50 sq. meter. The acquisition proceedings were done in the name of grand-father of Rajan Babu. However, it is the case of Rajan Babu that the total extent of the land is 660 square feet and the National Highways Department acquired only 436 square feet (45.5 sq. meter) and the balance land is available and he is entitled to enjoy the property without any interference. The said Rajan Babu has approached this Court in the year 2014 and filed a writ petition in W.P.(MD).No.2417 of 2014 challenging the proceedings issued by the Highways Department, dated 06.02.2014 by which, Rajan Babu was directed to remove the encroachment. Though there was challenge to the notice, the Court by order dated 12.02.2014



disposed of the writ petition by issuing certain direction and by the said order, three other connected writ petitions were also disposed of.

4. The operative portion of the order reads as follows:

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"4. In such view of the matter, we dispose of the writ petitions in the following terms.

(i) The impugned notice shall be treated as notices calling upon the petitioners to submit their explanation.

(ii) The petitioners are at liberty to submit their reply/explanation, with relevant documents, to the said notice within 15 days from the date of receipt of a copy of this order, before the third respondent.

(iii) On receipt of such explanation, within the time limited prescribed, the third respondent is directed to consider them and pass orders, on merits and in accordance with law.

(iv) Till such time final orders are passed, the occupation of the petitioners shall not be disturbed either by the authorities.

No costs. Connected miscellaneous petitions are closed."

5. Thus, in terms of the directions issued by the Division Bench, Rajan Babu, who is one of the petitioner therein submitted his objections/explanations to the notice and the Highways Authorities were directed to consider the same and pass orders on merits and in accordance with law. By way of implementation of the said order, the Highways Department issued notice dated 14.02.2014. Mr. Rajan Babu instead of complying with the direction issued by the Division Bench in the writ petition filed by him, he filed a suit in O.S.No.98 of 2014 on the file of the District Munsif Court, Manapparai, challenging the said notice.

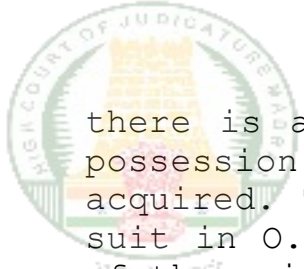
6. In our considered view, the suit is not maintainable and it would amount abuse of process of Court. In the mean time, since no proper action was initiated, the petitioner viz., Santhappan filed W.P.(MD).No.5061 of 2013, to direct the official respondents to remove the encroachment made by Rajan Babu in the lands which were acquired, for constructing the over bridge. It is submitted by the learned counsel appearing for Mr. Santhappan that when the writ petition was taken up for hearing, on coming to know that already Highways Department had issued notice and initiated action, hence, he withdrew the writ petition. Though the suit was not maintainable, yet Mr. Rajan Babu pursued the said suit in which, an Additional Commissioner was appointed in I.A.No.191 of 2014, who submitted a report dated 27.04.2014, which clearly shows that Rajan Babu is an encroacher of the land which has already been



acquired. The suit ultimately was not contested and the said Rajan Babu /plaintiff remained ex-parte and the suit was dismissed for default by judgment dated 12.01.2017. It is stated that as of now, an application has been filed to restore the suit, but the plaintiff has not moved the application for hearing. Once again Mr.Santhappan approached this Court and filed a writ petition in W.P.(MD).No.11686 of 2017 praying for a direction to remove the encroachment made by Rajan Babu. The said writ petition was disposed of, by order dated 24.07.2017, to consider the representation. Pursuant to which, the Highways Department issued notice to Rajan Babu, to remove the encroachment within a period of 3 months. For the notice dated 26.09.2017, Rajan Babu has submitted his objection and filed a writ petition in W.P.(MD). No.19353 of 2017. In the said writ petition, Santhappan was impleaded as the sixth respondent. The said writ petition was disposed of by directing the Highways Department to pass necessary orders within a time frame, leaving it open to Rajan Babu to submit all necessary documents and connected records supporting his case and if the records are produced, the same shall be taken into consideration at the time of conducting an enquiry and passing necessary orders. This Court directed Rajan Babu to lend his unstinted cooperation and assistance to the Highways Department in completing the proceedings within the time fixed by this Court. Pursuant to which, the Highways Department issued notice dated 06.11.2017 calling upon Rajan Babu to produce the documents in support of his claim that the total extent of land of 0.0045.5 square metre in T.S.No.90. Though the notice was issued to him to produce the documents, he appears to have not produced the document and the Highways Department, passed an order dated 24.11.2017 and this has been challenged by him in W.P.(MD). No.21831 of 2017 which had been heard by us. In the mean time, the suit which was dismissed for default in O.S.No.98 of 2014, is stated to have been restored to file and in the said suit, Rajan Babu filed an I.A.No.191 of 2014 to conduct a survey of the land in question by using the Satellite survey. At this stage, both the writ petitions are listed before us. Rajan Babu has to establish that the total extent of the property in T.S.No.90 is not 436 square feet but it is 660 square feet. We find that there is no document to the said effect and the only document which Rajan Babu places reliance is in the suit filed in O.S.No.353 of 2004 and the suit is for partition filed among the members of the family of Rajan Babu before the II Additional District Judge, Tiruchirappalli. In the said suit a compromise memorandum was filed, wherein Item No.10 in A Schedule property is the land in question. The compromise memorandum which is said to have been filed before the Court clearly shows that the area of land in T.S.No.90 is only 436 square feet, Rajan Babu traced title to the property by a sale deed dated 30.05.1952.

<https://hcservices.ecourts.gov.in/hcservices/>

7.Thus, if there is no document in possession of Rajan Banu to establish that the extent of land in T.S.No.90 is 630 square feet,



there is absolutely no case made out by Rajan Babu to remain in possession of the property as the property has already been acquired. The suits filed by Rajan Babu are not maintainable. The suit in O.S.No.98 of 2014 filed by Rajan Babu after the dismissal of the writ petition filed by him in which direction was issued to submit objection is clearly an abuse of process of the Court and the suit itself is liable to be dismissed. The question of conducting a Satellite survey also does not arise.

8. In the light of the fact that already the road has been laid and the bridge has been formed and the question of remaining in possession of the property does not arise. As noticed earlier, the acquisition proceedings were in the name of the grand-father of Rajan Babu. Therefore, no right vests with Rajan Babu and the chain of events will clearly show that it is his intention to drag on the proceedings by filing several cases before this Court and before the civil Court. Thus the challenge to the notice dated 21.11.2017 by Rajan Babu has to necessarily fail and W.P.(MD). No.21831 of 2017 is liable to be dismissed.

9. However, considering the fact that the petitioner Rajan Banu claims that he is in possession of some documents, this Court is of the opinion that one more opportunity can be granted to him to produce the documents if any before the authority.

10. Accordingly, in the light of the above, we dismiss the writ petition in W.P.(MD).No.21831 of 2018 and dispose of the writ petition in W.P.(MD).No.512 of 2018 by issuing the following directions;

(i) Mr. Rajan Babu is directed to appear before the Assistant Engineer (Project), Highways Department, Division IV, Trichy, on 09.04.2018 along with all documents, which are in his possession. The said authority shall consider the documents and hear the submissions made by Rajan Babu and proceed to take action in accordance with law. The prayer made by him for conducting a resurvey or fresh survey does not arise, as already the National Highways has been formed and bridge has been erected. The Assistant Engineer (Project) shall be assisted of Revenue Authorities during the course of enquiry. This direction shall be complied with by the Assistant Engineer and orders shall be passed on merits and in accordance with law, on or before 20.04.2018. Santhappan, is also entitled to participate in the enquiry. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)



To

1. The Chief Engineer,  
Highways Department (Project)  
Sarthar Patel Road,  
Guindy, Chennai.
2. The District Collector,  
Tiruchirappalli District.
3. The Divisional Engineer,  
Project Division,  
National Highways Department,  
Ponnagar, Trichy.
4. The Assistant Engineer (Project),  
Highways Department  
Division IV, Trichy.
5. The Tahsildar,  
Manapparai Taluk,  
Manapparai, Trichy District.
6. The Special Tahsildar, (Survey Department)  
Town Settlement,  
Manapparai Unit,  
Manapparai Trichy District.

+1cc to Mr.T.Lenin Kumar, Advocate Sr.No.57501  
+1cc to Spl.Government Pleader Sr.No. 58460  
+2cc to Mr.AN.Ramanathan, Advocate Sr.No.57746,57747

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VB/SV/MMS/SAR1/03.04.2018/6P/11C

**W.P. (MD) .Nos.512 of 2018 and 21831 of 2017  
and  
W.M.P. (MD) .No.18128 of 2017  
in  
W.P. (MD) .No.21831 of 2017**

**23.03.2018**