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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.11.2018

DELIVERED ON : 30.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P(MD)No.9339 of 2018

and

W.M.P(MD)Nos.8633, 8634 and 12808 of 2018

Rajanbabu

... Petitioner

Vs.

1. The Divisional Engineer,
Project Division,
State Highways Department,
Pon Nagar,
Trichy.

2. The Assistant Divisional Engineer,
(Highways Department),
Project Sub Division - II,
Trichy.

3. The Assistant Engineer (Projects),
Highways Department,
Division IV, Trichy.

4. The Revenue Divisional Officer,
Trichy.

5. Sathappan

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records relating to the impugned order of the third respondent in Letter No.ROB-LC 279/2018. /dated 17.04.2018 and quash the same as illegal.

For Petitioner

: Mr.AN.Ramanathan

For Respondents

: Mr.M.Jeyakumar

Additional Government Pleader
for R.1 to R.4

Mr.T.Lenin Kumar for R.5

**ORDER****R. SUBBIAH, J.**

This writ petition has been filed seeking a writ of Certiorari to call for the records relating to the impugned order of the third respondent in Letter No. ROB-LC 279/2 . Cur. /dated 17.04.2018 and quash the same as illegal.

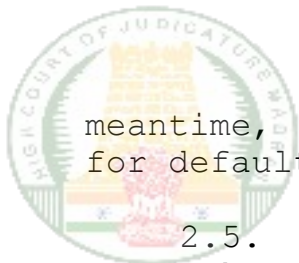
2. Short facts leading to the filing of the present writ petition, are narrated thus:

2.1. The grandfather of the petitioner purchased a property measuring an extent of 660 sq. ft., in S.F.No.90, Ward-D, Block-15 of Sevalur Village, Manapparai Taluk, Trichy District, through a registered sale deed dated 30.05.1952. From the date of purchase, the said property, which is abutting the Trichy - Dindigul Highways, is in possession and enjoyment of the petitioner's family. The respondents 1 to 3 having decided to construct an Over Bridge in the Highways, acquired only an extent of 45.5 sq. Mtr., (436 sq. ft.,) through the fourth respondent and the remaining portion is in the possession of the petitioner and he constructed the building and put up shops therein. At the end of the said road, the local body also constructed a drainage.

2.2. While so, the fifth respondent who is having his property in S.No.89B, filed a civil suit in O.S.No.326 of 2013 before the District Munsif Court, Manapparai, seeking injunction against the petitioner and two others, stating that his access to his property shall not be disturbed. The petitioner filed his written submissions in the said suit and now, it is pending.

2.3. Meanwhile, the third respondent issued a notice dated 06.02.2014 seeking to remove the encroachment alleged to have been made in S.No.90 by the petitioner and hence, he filed W.P(MD)No.2315 of 2014 before this Court and by order, dated 12.02.2014, directed to treat the impugned notice as notice calling upon the petitioner to submit his explanation and also granted liberty to the petitioner to submit his reply/explanation with relevant documents to the said notice within fifteen days from the date of receipt of a copy of the order to the third respondent. On receipt of the same, the third respondent was directed to consider and pass orders on merits and in accordance with law. Till such time, the occupation of the petitioner shall not be disturbed by the authorities.

2.4. Pursuant to the said order, the third respondent issued a notice dated 14.02.2014 calling upon the petitioner to submit his explanation. Again, the petitioner challenged the said notice in O.S.No.98 of 2014, wherein I.A.No.191 of 2014 was also filed seeking to appoint an Advocate Commissioner to inspect the property in question and file a report and accordingly, the learned Advocate Commissioner filed a report stating that the petitioner had encroached the land that belonged to the Highways Department. In the



meantime, the civil suit in O.S.No.98 of 2014 came to be dismissed for default and thereafter, he restored the same.

2.5. During the pendency of the civil suit, the fifth respondent filed W.P(MD)No.11686 of 2017 seeking a writ of Mandamus to direct the respondents 1 to 3 therein to remove the encroachment made by the petitioner herein in S.No.90, Sevalur Village, Manapparai Taluk, Trichy District, by considering the representation dated 27.05.2017 and this Court, by order dated 24.07.2017, directed the third respondent therein to consider and dispose of the said representation on merits as per law after issuing notice to the petitioner herein within a period of three months from the date of receipt of a copy of the order.

2.6. Thereafter, the third respondent issued a notice dated 26.09.2017 calling upon the petitioner to remove the encroachment on or before 05.10.2017 and the petitioner challenged the same by filing W.P(MD)No.19353 of 2017 and this Court, by order dated 12.10.2017, disposed of the said writ petition with certain directions. Later on, another notice dated 06.11.2017 came to be issued and the third respondent also passed an order dated 21.11.2017, based on the recommendation of the Special Tahsildar, Land Survey, Manapparai, dated 13.10.2017 and hence, the petitioner filed W.P(MD)No.21831 of 2017 before this Court on the ground of violation of principles of natural justice. The fifth respondent also filed W.P(MD)No.512 of 2018 seeking removal of encroachment alleged to have been made by the petitioner in S.No.90 and this Court, by common order dated 23.03.2018, disposed of both the writ petitions with certain directions.

2.7. Based on the said order of this Court, an enquiry was conducted by the third respondent on 10.04.2018, in which, the petitioner appeared along with all revenue documents and other relevant documents and held that the property in S.No.90 belonged to the Highways Department and the petitioner had encroached upon a portion of the said property and accordingly, the impugned order came to be passed. Aggrieved thereby, the present writ petition has been filed.

3. When the matter is taken up for hearing, the learned Counsel for the petitioner, adverting the averments made in the affidavit filed in support of this writ petition, submitted that originally, the petitioner was in possession and enjoyment of the property in S.F.No.90, Ward-D, Block-15 of Sevalur Village, Manapparai Taluk, Trichy District, measuring an extent of 660 sq. ft., and the respondents 1 to 3 acquired only a portion of the said property measuring an extent of 436 sq. ft., to construct an Over Bridge in the Highways and the remaining portion is in the possession of the petitioner and he constructed the building and put up shops therein. At the end of the said road, the local body also constructed a drainage. However, the fifth respondent by making false allegations made a representation and also filed several writ petitions alleging



that the petitioner had encroached upon the property in S.F.No.90 and constructed the buildings, because he has no access to reach his property in S.F.No.89B, which is situated behind the property of the petitioner and hence, started to give trouble to the petitioner by making false allegations.

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4. Per contra, the learned Counsel for the fifth respondent, reiterating the averments made in the counter affidavit filed by the fifth respondent, submitted that the entire extent of land in S.F.No.90 is only 455 sq. ft., and the petitioner failed to produce any material to substantiate his claim that he owns 660 sq. ft., in S.No.90 and hence, it is clear that the Highways Department acquired the entire extent of the land in S.No.90 and thus, prayed for the dismissal of this writ petition.

5. Whereas the learned Additional Government Pleader appearing for the respondents 1 to 4, on instructions, submitted that the entire extent of the land in S.F.No.90 is only 436 sq. ft., and not 660 sq. ft., as claimed by the petitioner and the Highways Department had acquired the entire extent of the land in S.F.No.90 and the petitioner is only an encroacher in the property in question and therefore, prayed for the dismissal of this writ petition.

6. We have carefully considered the submissions of the learned Counsel for the parties and perused the materials available on record.

7. Though several contentions have been raised on factual aspects, we make it clear that this Court is not conducting any roving enquiry into the disputed question of facts, especially, with regard to the extent of the land in question. We have to see whether proper opportunity of personal hearing is given to the petitioner or not. In the case on hand, on several occasions, notices were issued to the petitioner and enquiry was also conducted and thereafter only, the impugned order came to be passed in accordance with law. Even according to the respondents 1 to 4, the entire extent of the land in S.F.No.90 is only 436 sq. ft., which was already acquired by them for the construction of Over Bridge in Trichy - Dindigul Highways and no land is available in S.F.No.90 and accordingly, the petitioner is only an encroacher. Despite the same, the petitioner has successfully dragged on the proceedings by filing several writ petitions and also civil suits. Therefore, we do not find any merit in the present writ petition and thus, this writ petition fails.

8. Therefore, this writ petition stands dismissed. No costs. Consequently, W.M.P(MD)Nos.8633 and 8634 of 2018 are dismissed and W.M.P(MD)No.12808 of 2018 is closed.

Sd/-

Assistant Registrar(CO)



To

1. The Divisional Engineer,
Project Division,
State Highways Department,
Pon Nagar,
Trichy.
2. The Assistant Divisional Engineer,
(Highways Department),
Project Sub Division - II,
Trichy.
3. The Assistant Engineer (Projects),
Highways Department,
Division IV,
Trichy.
4. The Revenue Divisional Officer,
Trichy.

+1cc to Mr.AN.Ramanathan, Advocate Sr.No.98075

+1cc to SPL.Govt.Pleader, Sr.No.98257

+1cc to Mr.T.Lenin Kumar, Advocate Sr.No.98123

RSB

KM/SV/SAR4/06.12.2018/5P/8C

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