



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.09.2017
PRONOUNCED ON : 06.06.2018

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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.2179 of 2014

A.Anbalagan : Petitioner

Vs.

1. The Chief Engineer (General),
Highways Department,
Tamil Nadu Highways Authority,
Sardar Patel Road, Chennai-600 034.

2. The Divisional Engineer (Highways),
Madurai Division of Highways Authority,
Madurai.

3. The Assistant Divisional Engineer (Highways),
O/o. the Assistant Divisional Engineer,
Alagarkovil Road, (Near Lotus Tank),
Madurai-2.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records from the third respondent herein relating to his proceedings No.23-3/2010/E/Va.Tho.A/Encroachment dated 24.08.2011 and quash the same and further consequently direct the respondents herein to built a house in the place of demolition of the existing house situated at 4/89, Police Line Road, Koodal Malai Street, Thirupparankundram, Madurai-5 comprised in S.No.202/1 part now new Sub Division No.202/5 of Thirupparankundram Village.

For Petitioner

: Mr.J.Lawrance
for Mr.V.Venkatasamy

For Respondents

: Mr.T.S.Md Mohideen
Additional Government Pleader

**O R D E R**

[Order of the Court was made by **G.R.SWAMINATHAN, J.**]

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Heard the learned counsel on either side.

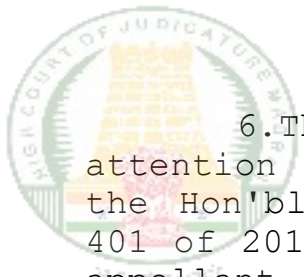
2.The case of the petitioner is that he purchased 874 square feet of vacant house site in Survey No.202/5 in Thirupparankundram Village from one R.Mathiyalagan, under a sale deed dated 21.10.1997 which was registered as Document No.2605/97 on the file of the Sub Registrar Office, Thirupparankundram. The purchase was in the name of the petitioner and his wife Radhika. The petitioner later put up a house and leased out the same.

3.According to the petitioner, the site in question is a natham and patta was issued in favour of his vendor by the Special Tahsildar under the Natham Land Tax Scheme on 14.02.1996.

4.It is his further case that along with his vendor he filed O.S.Nos.463 and 472 of 1997 before the District Munsif Court, Tirumangalam. The said suits were decreed and relief of permanent injunction was granted. The learned District Munsif had followed the decision of the Hon'ble Division Bench of this Court reported in **2004 (3) CTC 270-(The Executive Officer, Kadathur Town Panchayat, Harur Taluk, Dharmapuri District Vs. V.Swaminathan and others)**. The Hon'ble Division Bench in the said leading case had held that the title to house sites under Gramanatham would not stand transferred to Government. The learned Trial Munsif had given a further finding that the property in question is only a Village Natham and that the possession of the plaintiffs also stood proved. It was further observed that the plaintiffs cannot be said to be encroachers.

5.The petitioner leased out the said house. He was residing in Madurai. He used to visit his house once in six months to collect the rent. When he went to collect rent in April 2011, he was shocked to know that his house had been demolished. The lessee informed him that the Highways Department had without any prior notice demolished the same on 09.02.2011.

5.The petitioner filed W.P.(MD).No.7503 of 2011 dated 22.06.2011 before this Court and this Court by order dated 07.07.2011 directed the respondents to consider the petitioner's representation dated 12.04.2011. Pursuant to the aforesaid direction, the order impugned in the Writ Petition came to be passed rejecting the petitioner's representation. The same is assailed in this Writ Petition.



6. The learned counsel appearing for the petitioner drew the attention of this Court to the order dated 01.09.2016 passed by the Hon'ble Division Bench of this Court in W.A.(MD).Nos.28 and 401 of 2016. The writ petitioner's vendor R.Mathiyalagan was the appellant in one Writ Appeal and the respondent in the appeal filed by the Government. The factual foundation in the present proceedings as well as the said Writ Appeal is one and the same. The Hon'ble Division Bench while dismissing Writ Appeal No.28 of 2016 filed by the Government observed that the case is one which would merit award of compensation. However, it felt that the extent of damage is a matter which required factual investigation. It was of the view that these are matters that would not be appropriate to be determined in writ proceedings. Liberty was given to the said Mathiyalagan to work out his case for compensation by way of civil suit and that he would be entitled to the benefit of Section 14 of the Limitation Act.

7. We are of the view that the same course of action can be adopted in the present case also. The petitioner admittedly has a decree of the Civil Court in his favour. The respondents have not shown that the said decree has been set aside or stayed. The respondents have not established that due process was followed before demolishing the petitioner's building. But, again there is nothing on record to indicate the extent of damage suffered by the petitioner. The petitioner does not seem to have obtained any prior approval. Therefore, we leave it open to the petitioner to work out his right before the Civil Court seeking compensation. If the petitioner chooses to do so, he will be entitled to the benefit of Section 14 of the Limitation Act.

8. With these observations, the Writ Petition stands disposed of. No costs.

Sd/-

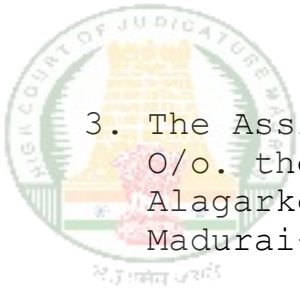
Assistant Registrar(CS-I)

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Sub Assistant Registrar

To:

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Highways Department,
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O/o. the Assistant Divisional Engineer,
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Madurai-2.

+1 cc TO Mr.J.Lawrance , Advocate in SR No. 67443

tsg

AE/SKN RSK/SAR1/21.06.2018/4P/5C

order made in
W.P. (MD) No.2179 of 2014
dated: **06.06.2018**