



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2018

CORAM:

WEB COPY

THE HONOURABLE Mr.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE Mrs.S.RAMATHILAGAM

W.P.(MD).No.22776 of 2017

and

W.M.P.(MD).No.19088 of 2017

M.Shanooj Mohamed Gafoor

... Petitioner

Vs.

1.The District Collector,
Collectorate Building,
Nagercoil, Kanyakumari District.

2.The Tahsildar,
Kalkulam Taluk, Thuckalay,
Kanyakumari District.

3.The Superintending Engineer,
National Highways,
No.10, 13th Cross Street,
Maharajanagar,
Tirunelveli-627 011,
Tirunelveli District.

4.The Additional Divisional Engineer,
National Highways,
Salt Street, Near Poorvika Mobile Shop,
Thuckalay-629 175
Kanyakumari District.

... Respondents

PRAYER: This petition is preferred under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing the respondents from any action taken on the land comprised under patta No.2336 of Kalkulam Village, Kanyakumari District in Survey No.B8/106/3B, B8/106/1D, B8/106/2 to an extent of 19.621 cents under the guise of removal of encroachments without any notice demarcation of the land by due process of law.



For Petitioner : Mr.F.Deepak
For Respondents : Mr.V.R.Shanmuganathan
Special Government Pleader

WEB COPY

O R D E R

(Order of the Court was made by N.KIRUBAKARAN,J)

By consent, the writ petition itself is taken up for final disposal, at the stage of admission.

2.Heard Mr.F.Deepak, learned counsel appearing for the petitioner and Mr.V.R.Shanmuganathan, learned Special Government Pleader, who takes notice for the respondents.

3.According to the petitioner, the petitioner has been in possession of the property comprised in Re-survey No.B8/106/2 and B8/106/3B of Thuckalay Village at Bus Stand Ward in Padmanabhapuram Municipality, Kalkulam Taluk, Kanyakumari District. He further submitted that the property was purchased by his father by virtue of a sale deed, dated 20.01.1995 and thereafter partition suit was filed and the property was partitioned as per decree in O.S.No.6 of 2010. Such being the position, the respondents are measuring the property to declare that the petitioner is an encroacher and to evict him from the property. Therefore, the petitioner gave a representation dated 08.12.2017 to the respondents. However, since there is no progress, the petitioner is before this Court seeking a writ of mandamus directing the respondents not to evict the petitioner from the property.

4.If any eviction has to be ordered, notice has to be given to the petitioner under Section 26 of the Tamil Nadu Highways Act 2001. Without giving notice and without hearing the petitioner no action could be taken against the petitioner or evict the petitioner from the property in question.

5.In view of the above, this Court directs the fourth respondent to take action as per the Act by giving notice under Section 26 of the Act and after hearing the petitioner and pass an appropriate orders on merits and in accordance with law. Till then, the petitioner shall not be evicted from the property in question. The said exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order.

6.The Writ Petition is disposed of with the above directions. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (C.O)

/True Copy/

Sub-Assistant Registrar



To

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+One cc to Mr.F.Deepak, Advocate, SR.No.41170

+One cc to The Special Government Pleader, SR.No.40809

ns

RL/7C/3P/SKN/RSK/SAR1/24/1/2018

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