

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM :

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.4288 of 2019 and
W.M.P.Nos.4827 & 4829 of 2019

A.Ganesan

.. Petitioner

Vs.

1.The District Collector,
Kancheepuram District.

2.The Divisional Engineer,
Highways Department,
Chennai Metropolitan Development Project,
Division - IV, Alandur,
Chennai - 600 016.

3.The Assistant Divisional Engineer,
Highways Department,
Construction and Maintenance Wing,
Tambaram, Sub Division,
Chennai - 42.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus to call for the records of the 3rd respondent vide notice No.149/2016-275 Medavakkam/e.va.tho.a/dated 09.06.2017 and the consequential order of the 3rd respondent in its letter No.W.P.No.15941/2017/JDO/dated 29.01.2019 and to quash the same.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.V.Jayaprakash Narayanan,
Government Pleader (i/c)

O R D E R

(ORDER OF THE COURT WAS MADE BY M.DURAI SWAMY, J.)

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus to call for the records of the

3rd respondent dated 09.06.2017 and the consequential order of the 3rd respondent dated 29.01.2019.

2.It is the case of the petitioner that the 3rd respondent passed the impugned order dated 29.01.2019 without considering the petitioner's reply dated 29.01.2018 and without giving an opportunity of personal hearing. Earlier, the petitioner has filed a Writ Petition in W.P.No.15941 of 2017 challenging the notice dated 09.06.2017 and the Division Bench of this Court, by order dated 15.11.2017, disposed of the Writ Petition, giving liberty to the petitioner to submit his reply within two weeks and directing the 3rd respondent to consider the same and pass orders in accordance with law within a period of two weeks thereafter.

3.Though the petitioner has challenged the notice dated 09.06.2017 and the consequential order dated 29.01.2019 in this Writ Petition, the learned counsel appearing for the petitioner submitted that the petitioner is giving up the prayer with regard to notice dated 09.06.2017 since the same has already been challenged by the petitioner in W.P.No.15941 of 2017. Further, the learned counsel submitted that the petitioner is restricting his prayer only with regard to the consequential order dated 29.01.2019. The learned counsel for the petitioner submitted that on 15.02.2016, the 3rd respondent issued notice under Highways Act in respect of Survey No.409 and to hand over vacant possession of 114.75 sq.m.

4.The learned counsel appearing for the petitioner submitted that the petitioner is in possession of the land, which is a Gramma Natham land and therefore, the respondents have no right to take possession of the same. Further, the learned counsel submitted that when the 3rd respondent had issued notice dated 15.02.2016 in respect of the Survey No.409, in the notices dated 09.06.2017 and 29.01.2019, the 3rd respondent has mentioned the Survey Numbers as 432 and 499/2.

5.The 3rd respondent filed a counter, wherein he has stated that the petitioner is in possession of Government Poramboke land and that he is not in possession of Gramma Natham lands.

6.Further, the learned Government Pleader (i/c) submitted that this is third round of litigation prosecuted by the petitioner in respect of the very same land. The petitioner filed a Writ Petition in W.P.No.17780 of 2016 contending that

the lands are Gramma Natham lands and it does not vest with the Government or with the Highways Department. The petitioner sought for a prayer to direct the respondents therein to make proper survey in respect of the lands. By order dated 12.05.2016, this Court directed the 3rd respondent to give an opportunity of personal hearing to the petitioner and pass appropriate orders. In compliance of the order dated 12.05.2016 made in W.P.No.17780 of 2016, the petitioner was requested to appear for personal hearing, along with the Revenue Records and evidence as to the ownership of the property, on 18.11.2016. However, the petitioner has not produced any revenue documents with regard to the ownership of the land.

7. Further, the 3rd respondent has stated that on a perusal of a Sale Deed of the year 1988 produced by the petitioner, it was made clear that Survey No.432/2 at Medavakkam Village has been recorded in the Revenue Record as Medavakkam Village Poramboke land. Further, on verification of another Sale Deed No.3998/1988, it was found that the land purchased by the petitioner in Survey No.400/3A is also a Government land (Village Site). After conducting enquiry as directed by this Court, a notice under Section 28(2)(ii) of the Tamil Nadu Highways Act, 2001 was issued on 09.06.2017. As against the same, the petitioner filed W.P.No.15941 of 2017. This Court, by order dated 15.11.2017, disposed of the Writ Petition, giving liberty to the petitioner to submit his reply within two weeks and directing the 3rd respondent to consider the same and pass orders in accordance with law within a period of two weeks thereafter.

8. On a perusal of the order passed in W.P.No.15941 of 2017, dated 15.11.2017, it is clear that the petitioner has not made any submission with regard to Survey No.409, which is being raised in this Writ Petition. The 3rd respondent in his counter has categorically stated that the land in dispute is not a Gramma Natham land and it is a Government Poramboke as per the Revenue Records. Since the petitioner is in possession of Government Poramboke land, patta was not issued to him. That apart, when this Court directed the petitioner to submit his reply within two weeks in W.P.No.15941 of 2017 dated 15.11.2017, the petitioner chose to submit his reply belated only on 29.01.2018. Further, in the impugned order, the 3rd respondent has stated that the encroachment made by the petitioner is causing major hindrance to the construction of storm water drain. The photographs produced by the learned Government Pleader (i/c) would establish that the encroachments made by the petitioner is right on the main road obstructing the free flow of traffic. Considering all these aspects, the 3rd respondent has passed the impugned order dated 29.01.2019. We are of the view that the order passed by the 3rd respondent is just and proper.

9. In these circumstances, we do not find any error or irregularity in the order passed by the 3rd respondent. The Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Kancheepuram District.
 2. The Divisional Engineer,
Highways Department,
Chennai Metropolitan Development Project,
Division - IV, Alandur,
Chennai - 600 016.
 3. The Assistant Divisional Engineer,
Highways Department,
Construction and Maintenance Wing,
Tambaram, Sub Division,
Chennai - 42.
- +1 cc to Mr.V.Vijayashankar, Advocate, S.R.No.36191
- +1 cc to the Government Pleader, S.R.No.36259

W.P.No.4288 of 2019 and
W.M.P.Nos.4827 & 4829 of 2019

RV(CO)
SSM(21/05/2019).

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