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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04..07..2019

CORAM

The Honourable Mr Justice M.M.SUNDRESH
and
The Honourable Mr Justice M.NIRMAL KUMAR

Contempt Petition No.2060 of 2018
and

Review Application No.98 of 2018

Contempt Petition No.2060 of 2018

D.Kaliyaperumal

... Petitioner

-Versus-

- 1.Thiru.K.R.Thiruguna, M.E.,
Assistant Divisional Engineer,
Highways,
Tittagudi, Cuddalore District.
- 2.Thiru.P.Sathiyan, M.A.,
Tahsildar,
Tittagudi,
Cuddalore District.
- 3.Arulmigu Virudhagiriswarar Temple,
Rep. by its Executive Officer,
Virudhachalam Taluk, Cuddalore District.
- 4.The Joint Commissioner,
H.R. & C.E. Department.

(Respondents 3 & 4 impleaded as per order
of this Court dated 04.03.2019 made in
Contempt Petition No.2060 of 2018)

... Respondents

Petition filed under Section 11 of the Contempt of Courts
Act, 1971, praying to punish the respondents for disobeying the
order of this court dated 21.12.2017 made in W.P.No.33433 of
2017.



Review Application:

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- 1.E.Thangarasu
- 2.Tmt.Pachaiammal
- 3.Tmt.Sumathi
- 4.Tmt.Dhanam
- 5.Tmt.Kathayee
- 6.R.Chellamuthu

... Petitioners

-Versus-

- 1.D.Kaliyaperumal
- 2.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Highways and Minor Ports Department,
Secretariat, Chennai-9.
- 3.The Director General of Highways,
Guindy, Chennai 600025.
- 4.The District Collector,
Cuddalore, Cuddalore District.
- 5.The Divisional Engineer,
High ways and Rural Road,
Cuddalore and Cuddalore District.
- 6.The Assistant Divisional Engineer,
High Court, Titagudi, Cuddalore.
- 7.The Tahsildar,
Titagudi, Cuddalore District.

... Respondents

Review application filed under Order 47, Rule 1 r/w and Section 114 of CPC, praying to review the order dated 21.12.2017 made in W.P.No.33433 of 2017.

Prayer in W.P.No.33433 of 2017:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 1 to 6 to consider the claims of the petitioner and



pass orders on the representation of the petitioner dated 27.10.2017 in regard to eviction of the encroachers from the Highways land as per the Highways Act.

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For Petitioner in : Mr.G.Elanchezhiyan
Cont.P.No.2060 of 2018
and for R1 in
Rev.Aplw.No.98 of 2018

For Respondents in : Mr.M.Elumalai, GA for
Cont.P.No.2060 of 2018 RR1 and 2

Mr.M.Maharaja, Spl. G.P.
(HR & CE) for RR3 and 4

For Petitioner in Review : Mr.C.Prakasam
Application No.98 of
2018

For Respondents in : Mr.M.Elumalai for RR2 to
Review Application No.98 7
of 2018

ORDER

[Order of the court was made by Justice M.M.SUNDRESH]

Alleging that the order passed by this court in W.P.No.33433 of 2017 dated 21.12.2017 has not been complied with and thus violated, the present contempt petition has been filed. Seeking to review the above said order, the respondents 7 to 12 in the above said writ petition are before this court with Review Application No.98 of 2018.

2. The Division Bench of this court in the order cited supra was pleased to pass the following order:-

"6. Though the petitioner has prayed for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected



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by the petitioner, directs the 6 th respondent to act on the communication of the 5 th respondent dated 09.11.2017 in Letter No.25/2017//ep/c/, and submit a report to the 5 th respondent within a period of three weeks from the date of receipt of a copy of this order and depending upon the communication to be sent by the 6 th respondent, the 5 th respondent shall consider and dispose of the representation dated 27.10.2017 submitted by the petitioner, on merits and in accordance with law and pass appropriate orders within a further period of eight weeks from the date of receipt of the communication from the 6 th respondent herein and communicate the decision taken, to the petitioner herein."

3. Pursuant to the aforesaid order, action was taken by the Assistant Commissioner, Cuddalore through her communication sent to the Joint Commissioner, HR & CE, Villupuram. From the aforesaid communication dated 01.03.2019, it appears that the lands in question, which have been encroached by various persons, belong to the HR & CE Department. The petitioner claims to be a lessee. Having found that the petitioner is no longer lessee, an order was passed by the Revenue Tahsildar on 09.01.2019. Therefore, as of now, the petitioner is not a lessee.

4. Now, the learned Special Government Pleader appearing for the respondents 3 and 4 as well as the learned Government Advocate appearing for the respondents 1 and 2 in the contempt petition submitted that appropriate action would be taken against all the encroachers including the petitioner.

5. At this juncture, the learned counsel appearing for the petitioners in the review application submitted that the petitioners have already given representations to the Joint Commissioner, HR & CE Department, Villupuram, as well as to the District Collector, Cuddalore, for allotment of land on lease or rent. According to him, the petitioners would be satisfied if their representations are considered in the light of the letter dated Nil Na.Ka.Vi3/7048/2019 (signed on 06.06.2019) addressed to the Joint Commissioner, HR & CE Department, Villupuram, by the District Collector, Cuddalore in this regard. The above said statement of the learned counsel for the petitioners in the review application is recorded.



6. The learned counsel appearing for the petitioner submitted that the land in question belongs to the Highways Department and it is the said department which has to take action. Reliance has been made on the communication sent by the Assistant Divisional Engineer, Highways Department to the Revenue Tahsildar dated 09.11.2017, which has been taken note of by this court while passing the aforesaid order. He further made reliance on the communication of the Divisional Engineer (Highways), Construction and Maintenance, Cuddalore 607 001 sent to the Superintending Engineer (Highways), Construction and Maintenance, dated 22.06.2018 in Letter No.672/2018/A2. We are afraid that the aforesaid communication cannot be relied upon, especially, in contempt proceedings before us. This was only an inter department communication. In any case, the report submitted by the Assistant Commissioner, Cuddalore, to the Joint Commissioner, HR & CE Department, Villupuram, is a subsequent communication dated 01.03.2019. There are also civil proceedings pending between the parties. The lease was given in favour of the petitioner about 40 years ago. The petitioner's grievance is personal in nature. Thus, looking from any perspective, we do not find any willful disobedience on the part of the respondents, particularly, when the HR & CE Department was not arrayed as a party in W.P.No.33433 of 2017.

7. In the result, (i) Contempt Petition No.2060 of 2018:- This contempt petition stands dismissed. However, we make it clear that there is no impediment for the respondents including the HR & CE Department to proceed with further in accordance with law towards removal of encroachments.

(ii) Review Application No.98 of 2018: This Review Application is also closed, however, with a direction to the Joint Commissioner, HR & CE, Cuddalore, to consider the representations given by the petitioners for allotment of land on lease pr rent and to pass suitable orders thereof within a reasonable time.

SD/-
ASSISTANT REGISTRAR(COMM.CASES)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.



To

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- 1.The Assistant Divisional Engineer, Highways,
Tittagudi, Cuddalore District.
- 2.The Tahsildar, Tittagudi, Cuddalore District.
- 3.The Executive Officer, Arulmigu Virudhagiriswarar Temple,
Virudhachalam Taluk, Cuddalore District.
- 4.The Joint Commissioner,
H.R. & C.E. Department, Villupuram.
- 5.The Secretary to Government, Highways and Minor Ports
Department, Secretariat, Chennai-9.
- 6.The Director General of Highways,
Guindy, Chennai 600025.
- 7.The Divisional Engineer,
High ways and Rural Road,
Cuddalore District, Cuddalore.
- 8.The District Collector,
Cuddalore District.
- 9.The Joint Commissioner,
HR & CE Department, Cuddalore.

Cont.P.No.2060 of 2018

&

Rev. Application No.98 of 2018

vsn ii[co]
srg 05/08/2019