

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.01.2019

CORAM

THE HON'BLE MR JUSTICE M. VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

W.P.No.27592 of 2016
and WMP No.23772 of 2016

P. Jothi

... Petitioner

Vs

1. The Chief General Manager,
Tech & Regional Officer,
Chennai Region,
National Highways Authority of India,
No.1/54-28, Butt Road,
St. Thomas Mount, Chennai

2. The General Manager,
Tech & Project Director,
National Highways Authority of India,
No.212-3/D3-1, Srinagar Colony,
Narasothipatti,
Salem.

3. The District Collector,
Salem District,
Salem

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus forbearing the Respondents to remove or demolish Sri Siddhe Vinayagar Temple at Vinayagapuram (Bus Stop), Attur Town, Salem District except due process of law, consequently direct the Respondents to consider the Petitioner's representation dated 08.06.2016 by which undertaking given in writing accepting to demolish/shift the said Temple as and when any project come for widening the concern road forthwith, as such presently the above Temple is not hindrance to the public transport/traffic and to permit the trustees and local residents to conduct regular Pooja and usual festival till then.

For petitioner : No appearance
For R.1 & R.2 : Mr.J. Joseph Stalin
for M/s P. Wilson Associates

For R.3 : Mr.S.N. Parthasarathy
Govt. Advocate

ORDER

(Order of the Court was made by M VENUGOPAL,J.,)

No counter is filed on behalf of the Respondents 1 to 3.

2. According to the Petitioner, she is residing along with his family at 52-A, Salem Cuddalore Main Road, Vinayagapura, Narasingapuram Post, Attur Taluk, Salem District. She is one of the customary hereditary trustees of Sri Siddhe Vinayagar Temple, situate at near Vinayagapuram Bus Stop, Attur Town, Salem District. The above said Temple was built during the year 1950 and the construction of said Temple was just 200 sq.ft.

3. As a matter of fact, the Petitioner's Father-in-Law viz., Mr.Marimuthu Padayachi along with other founder Trustees had constructed the Temple with the contribution of the general public. The said Temple is being administered by the customary hereditary trustees, consisting of seven members Committee and offerings are made to the Temple periodically on rotation basis to perform pooja everyday morning and evening continuously for the last many decades without fail and paying salary to the Poosari. The aforesaid Temple is the centre of faith in the locality and the people living around have unconditional faith on the God Sri Siddhe Vinayagar in the Temple.

4. The 'Committee of Hereditary Trustees' obtained Electricity Connection vide No.04-559-004-79 and regularly paying electricity consumption charges in respect of the Temple. It is an admitted fact that the aforesaid Temple is situated on one side edge next to 35 years old Tamarind trees in the land belongs to the Highways Department on record. The said Temple is the sole origin of grown in the locality and the same is in existence for the last 66 years with the knowledge of Highways Department without any hindrance to traffic or whatsoever

5. When that be the factual situation, on 29.06.2016, the Respondents made an endeavour to demolish the said Temple without prior notice/announcement in the locality. Thus the followers of the said Temple and general public gathered in huge numbers and strongly opposed the unlawful demolition of the Temple. However, the Respondents proceeded with demolition process and demolished a portion of the Temple asbestoses. The Respondents 1 to 3 have not served any Notice on the 'Committee of Hereditary Trustees' of the Temple till date.

6. It appears that the Second Respondent had initiated demolition proceedings pursuant to the Order passed in W.P.No.5576 of 2015 dated 03.03.2015 filed before this Court. The Temple is connected with religious faith and sentiments of the people in the locality and the proposed action of the Highways Department in evicting the aforesaid Temple has not at all culminated from the public opinion/Government authorities. As such, the unilateral action of the Respondents No.1 and 2 to demolish the aforesaid Temple is arbitrary, illegal and unconstitutional.

7. The grievance of the Petitioner is that the Respondents have not issued eviction notice under Subsection 8 of Section 26 of the Control of National Highways (Land and Traffic) Act, 2002 and as such, the process of demolition of the Temple will be hit with severe legal infirmities. Further, the Respondents had failed to consider the Petitioner's representation dated 08.06.2016 by courier post and as such, the Respondents had not issued any communication to the Petitioner in this regard. Hence, the Petitioner has filed the present Writ Petition seeking to issue a Writ of Mandamus forbearing the Respondents to remove or demolish Sri Siddhe Vinayagar Temple at Vinayagapuram Bus Stop, Attur Town, Salem District except due process of law, consequently direct the Respondents to consider the Petitioner's representation dated 08.06.2016 by which undertaking given in writing accepting to demolish/shift the said Temple as and when any project come for widening the concern road forthwith.

8. It is to be borne in mind that Sec.26(8) of The Control of National Highways (Land and Traffic) Act, 2002 enjoins as under:

26. Removal of unauthorised occupation:

(8) Notwithstanding anything contained in this section, if the Highway Administration or the Officer authorised by such Administration in this behalf is of the opinion that any unauthorised occupation on the highway land is of such a nature that the immediate removal of which is necessary in the interest of-

(a) the safety of traffic on the Highway ; or

(b) the safety of any structure forming part of the Highway

and no notice can be served on the person responsible for such unauthorised occupation under this section without undue delay owing to his absence or for any other reason, the

Highway Administration or the Officer authorised by such Administration may make such construction including alteration of any construction as may be feasible at the prescribed cost necessary for the safety referred to in clause (a) or clause (b) or have such unauthorised occupation removed in the manner specified in sub-section (7)"

9. It is to be noted that Section 26(9) of the The Control of National Highways (Land and Traffic) Act, 2002, showers same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters.

"(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

© issuing commissions for the examination of witnesses; and

(d) any other matter which may be prescribed,

and any proceeding before such Administration or Officer shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860) and the Administration or the Officer shall be deemed to be a Civil Court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

10. Section 27 of The Control of National Highways (Land and Traffic) Act, 2002 speaks of 'Recovery of cost of removal of unauthorised occupation and fine imposed'.

11. In this connection, it is out of place to make a pertinent mention that this Court, in W.P.No.5576 of 2015 between P. Selvarajan vs The Chief General Manager (Tech) & Regional Officer and others, had observed the following:-

The allegation in the Public Interest Litigation is that the National Highway, NH68, starting from Udayampatti at Km 46/000 to Thulukkanur at Km 53/500 of a length of 7.5 km is a two lane road. The land adjoining was required for widening of the road for formation of these two lanes. However, the sides of the Highway are

alleged to have been encroached, reducing the width of the Highway and thereby obstructing the free flow of traffic. It is alleged that encroachments are to the extent of reducing the width of the road by 10 to 20 metres.

2.The petitioner has made a representation dated 16.06.2014 followed by a reminder dated 16.10.2014. Learned counsel submits that it is the first two respondents who have to take action.

3.In view of the aforesaid, we consider it appropriate to direct the first two respondents to consider the representation of the petitioner and if any encroachments are found on the Highway, take action in accordance with law, with notice to all concerned. The needful be done within one month of receipt of this order."

and disposed of the said Writ Petition.

12. As far as the present case is concerned, the principal grievance of the Petitioner is that no Notice under Subsection 8 of Section 26 of The Control of National Highways (Land and Traffic) Act, 2002 was given to the Temple or the concerned Authorities prior to the initiation of action by the National Highways Authorities. Also that, the Petitioner's Representation dated 08.06.2016 sent to the Respondents No.1 and 2 through Courier Post had not seen the light of the day till date.

13. In view of the upshot and considering the crystalline admission made by the Petitioner in Paragraph No.5 of the affidavit of the Writ Petition that the ' subject Temple is situated at one side edge next to 35 years Tamarind tree in the land belongs to the Highways Department on record'. this Court at this stage, simpliciter directs the Respondents No.1 and 2 to issue prior Notice to the Petitioner before initiation of any encroachment removal action strictly in accordance with the ingredients of the The Control of National Highways (Land and Traffic) Act, 2002 and after affording reasonable opportunity of hearing to the Petitioner and also considering the objections, if any, of the Representation of the Petitioner dated 08.06.2016, to pass necessary order in a free, fair, just, unbiased and dispassionate manner, of course, within a period of six weeks from the date of receipt of a copy of this order.

15. It is open to the Petitioner to raise all points raised (Both the Factual and Legal pleas) in a complete and comprehensive manner before the Respondents No.1 and 2, who shall take note of the same and to dispose of the Representation of the Petitioner dated 08.06.2016 by dealing with the points raised within the time adumbrated by this Court. The Petitioner is directed to lend his unstinted co-operation and assistance to the Respondents 1 and 2 so as to enable them to complete the enquiry in a comprehensive manner.

16. With the above observation, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Chief General Manager,
Tech & Regional Officer,
Chennai Region,
National Highways Authority of India,
No.1/54-28, Butt Road,
St. Thomas Mount, Chennai.

2. The General Manager,
Tech & Project Director,
National Highways Authority of India,
No.212-3/D3-1, Srinagar Colony,
Narasothipatti,
Salem.

3. The District Collector,
Salem District,
Salem

+1 CC to Govt. Pleader sr 6030.

+1 CC to M/s.P. Wilson Associates sr 5599.

W.P.No.27592 of 2016

SJ(CO)
SP(15/02/2019)