

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.16720 of 2019

K.Chinnusamy

...Petitioner

-Vs-

- 1.The Principal Director
Highway Department
Guindy, Chennai-600 025
- 2.The Chief Engineer
Highway Department
Guindy
Chennai-600 025
- 3.The Regional Engineer
Highway Department
Construction and Maintenance
Salem-7
- 4.The Divisional Engineer
Highway Department
Construction and Maintenance
Edappadi
Salem District
- 5.The Assistant Divisional Engineer
Highway Department
Construction and Maintenance
Omalur
Salem District
- 6.The Superintending Engineer
Highway Department
Salem District

7.The Assistant Engineer
Highway Department
Construction and Maintenance
Mecheri
Salem District

8.M.Kamalakaran

9.Kalaivanan

10.Vamalai

..Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, to issue writ of Mandamus directing the respondents 1 to 7 to remove the shops of 8 to 10 respondents and others were located encroaching the Salem to Mettur and Mettur to Salem Highway at about 1 Km near Bathrakaliamman Temple at Mecheri, Salem District, by considering the petitioner's representation dated 08.01.2019.

For Petitioner : Mr.Karan and Uday

For Respondents: Mr.A.N.Thambidurai, Spl.G.P., for R1 to R7
Mr.M.R.Jothimanian, for R8 and R9.

ORDER

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

The Writ Petitioner claimed to be a Public Interest Litigant, came forward to file this writ petition styled as Public Interest Litigation alleging that respondents 8 to 10 had caused encroachment of the land belonging to Highways and also put up structures. On account of the same, the road users are put to extreme hardship and difficulty and some inconvenience is also caused to them. The Petitioner in this regard, submitted a representation dated 08.01.2019 to the concerned officials to remove the encroachments, in Mettur to Salem Main Road and pass appropriate orders. The writ petition was entertained on 21.06.2019.

2. The Assistant Divisional Engineer[Highways (C&M), Omalur] - 5th respondent has filed counter affidavit dated 08.07.2019, wherein, he took a stand that the Assistant Engineer (Highways) Construction and Maintenance, Mecheri Section, addressed a letter No.22/Encroachment/01-2019/AE dated 22.01.2019 and the Assistant Divisional Engineer also written a letter vide No.03/2019/JDO/dated 29.01.2019 to the Tahsildar, Mettur, to determine and mark the exact boundaries of the Highway land, so

as to ascertain whether there is any encroachment as claimed by the petitioner. It is further stated in the said counter affidavit that respondents 8 and 9 had already filed a suit in O.S.No.19 of 2013 before the District Munsif, Mettur, praying for permanent injunction, restraining the defendants, their men and subordinates from interfering with the peaceful possession and enjoyment in the suit property except under due process of law and it was also decreed as prayed for on 09.11.2018. Further, the 5th respondent also filed additional counter affidavit dated 20.11.2019 and took a stand that the land comprised in S.No.247/1A, Mecheri Village, Salem District, is classified as Road Margin and it is the margin for both the Highways Department Road and Town Panchayat Road on Northern side and Western side respectively and the entire portion of the land in S.No.247/1A contains parts belonging to the said departments and further subdivision is yet to be done and in this regard, a letter dated 01.11.2019 was addressed to the Tahsildar, Mettur, for effecting necessary corrections in the village records.

3. The 5th respondent took a stand that once the land is surveyed and divided and vested with respective departments, steps will be taken in accordance with law, for eviction of encroachment and he would further add that the lands in S.No.247/1A, are abutting Omalur Mecheri State Highways and it is required for road development for the purpose of ensuring better road traffic and that apart Mettur-Attur major drinking water scheme pipeline also runs underneath the said lands and the land is required for the maintenance of the said pipeline.

4. The respondents 8 and 9 had filed counter affidavit dated 14.10.2019 and took a stand that land in Survey No.247/1A, Mecheri Village, is classified as Natham land and though it was classified as "Road Margin", on account of the subsequent subdivision, reclassified as Natham land and the forefathers of the respondents 8 and 9 were in possession for very many decades. It is further averred by the respondents 8 and 9 that at the instance of one Vijayakumar, who is inimical to them, the petitioner is exposing the anger for dispossessing them and further in this regard, three civil suits viz., O.S.No.109 of 2018, O.S.No.128 of 2018 on the file of District Munsiff, Mettur and O.S.No.226 of 2018 on the file of Sub-Judge, Mettur, were also pending and thus, prays for dismissal of this writ petition.

5. The learned counsel appearing for the petitioner would submit that in the light of the fact that S.No.247/1A is classified as Road Margin, it is obligatory on the part of the

5th respondent to follow due process of law, in removing the encroachment for free flow of traffic and future developments.

6. Mr.A.N.Thambidurai, learned Special Government Pleader appearing for official respondents would submit that once the survey has been done by the Tahsildar, Mettur, appropriate decision will be taken in accordance with law, to remove the encroachment including the lands in the above said survey numbers i.e, S.No.244 and 247/1A.

7. It is submitted by the learned counsel appearing for respondents 8 and 9 that in the light of the above facts, though the land in question is a Government poramboke land, by way of subsequent reclassification, it became Natham land and since the respondents 8 and 9 are in enjoyment for very many decades and despite the fact that they have not been issued with pattas, it is not open to the official respondents to vacate them, except by due process of law and further there are very many encroachments on the said lands and therefore, it is obligatory on the part of the official respondents to identify them and remove the encroachment and they cannot be selective in their approach and prays for dismissal of the writ petition.

8. This court has considered the rival submissions and perused the material placed before it.

9. According to the 5th respondent, the land in Survey No.247/1A is classified as Road Margin and some portion of the land belongs to Highways as well as to the Town Panchayat and after the survey and division, eviction process will be done and in this regard, assistance of Police is also sought for, as and when the said process is completed, immediately, proper action will be taken strictly in accordance with law to remove the encroachment.

10. It also appears from the affidavit filed by respondents 8 and 9 that there are pending civil suits in O.S.No.109 of 2018, O.S.No.128 of 2018 respectively on the file of District Munsiff, Mettur, and O.S.No.226 of 2018 on the file of Sub Judge, Mettur. It is also brought to the knowledge of this court by the learned counsel appearing for the petitioner that 8th respondent along with 7 others had filed O.S.No.313 of 2019 on the file of the Subordinate Judge, Mettur, praying for declaration declaring the sale deed dated 05.02.2018 created by defendants 3 to 7, as null and void and also sought for similar declaration in respect of sale deed dated 10.02.2016 created by 9th defendant, sale deed dated 26.10.2015 created by 13th defendant as well as sale deed dated 27.07.2011 created by 15th defendant, as null and void and also decree of declaration declaring their title over the suit properties on the basis of

their long possession and enjoyment of the suit property, and the said suit is pending without any interim orders.

11. A perusal of the averments made in the plaint in O.S.No.313 of 2019, would disclose that the plaintiffs claim that they are in possession of the suit property admeasuring 1.12 acres and 0.56 acres of land in S.No.247/1, new S.No.247/1A Village natham, Salem village for over 150 years. The plaintiffs therein also enclosed 15 documents to probablise their claim that their forefathers, by way of succession and possession are in enjoyment over the suit property for 150 years, but the earliest document is of the year 2011 only.

12. Since the 8th respondent along with six others filed a comprehensive suit for declaration of title in respect of the property in question, if they are so advised, they are at liberty to work out their remedy before the said forum and pendency of the suit, in the absence of interim order, is not a bar on the part of the official respondents, to proceed against the encroachments in respect of the lands in question, in accordance with law and the said exercise is to be completed, within a period of 12 weeks from the date of receipt of a copy of this order, by adhering to the principles of natural justice and the decision taken in this regard, shall be communicated to the persons concerned.

13. The Writ Petition is disposed of accordingly. No costs. Registry shall communicate the order to the court of Principal District Munsif, Mettur, Salem, as well as Sub Judge, Mettur.

Sd/-
Assistant Registrar(CS III)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

nvsri

To

1.The Principal Director
Highway Department
Guindy, Chennai-600 025

2.The Chief Engineer
Highway Department
Guindy
Chennai-600 025

3.The Regional Engineer
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Salem District

6.The Superintending Engineer
Highway Department
Salem District

7.The Assistant Engineer
Highway Department
Construction and Maintenance
Mecheri
Salem District

copy to:

1.The Principal District Munsif,
Mettur, Salem.

2.The Sub Judge,
Mettur

+1cc to M/s.Karan and Uday, Advocate sr.100985
+1cc to Mr.M.R.Jothimanian, Advocate sr.100477
+1cc to Government Pleader SR.NO. 101193

W.P.No.16720 of 2019

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