

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE
AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4029 of 2019

C.M.P.No.14051 of 2019

Lenin Kudisai Mattru Variya

Pathukappu Sangam

rep.by its Secretary

.. Appellant/Petitioner

-vs-

1.The State of Tamil Nadu,
rep.by its Secretary to Government,
Housing & Urban Development Department,
Secretariat,
Chennai-600 009

2.The District Collector,
Trichy District, Trichy.

3.Executive Engineer,
Tamil Nadu Slum Clearance Board,
Trichy Division,
16/3, Williams Road,
Trichy-1

4.Divisional Engineer,
Highways Department,
Trichy-20

5.Assistant Divisional Engineer,
Highways Department,
Trichy-20

6.The Southern Railways,
rep.by its General Manager,
Chennai-600 003

.. Respondents

Appeal filed under Clause 15 of the Letters Patent against the Order of the Commissioner of Income Tax (Appeals), Chennai -34, made in ITA No. dated against the Order of the Income Tax Officer made in the order dated 19.09.2017 passed in W.P.No.35128 of 2003 on the file of this Court.

WP.No.35128 of 2003:Writ Petition filed under article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus for bearing the respondents from taking any action to evict or dispossess the members of the petitioner Association mentioned in the Annexure to this petition from their residence residing in Survey No.17/3, 'L' Block K.Abhisekapuram Trichy Taluk and District under the Tamil Nadu Land Encroachment act.

For Appellant : Mr.P.Ganesan
For Respondents Mr.Kamalesh Kannan,
Government Advocate for
R1 to R5
Mr.P.T.Ramkumar for R6

JUDGMENT

(Judgment of the Court was delivered by
The Hon'ble Chief Justice)

We have heard Mr.P.Ganesan, learned counsel for the appellant and Mr.Kamalesh Kannan, learned Government advocate, for R1 to R5 and Mr.P.T.Ramkumar, learned counsel for the Railways.

2.The appellant, through R.Madurai Balan, who claims himself to be the Secretary, has filed this Appeal questioning the impugned order dated 19.09.2017, passed in W.P.No.35128 of 2003, where, the relief prayed for was to restrain the respondents from evicting the members of the appellant association from their premises over Survey No.17/3, 'L' Block K.Abhisekapuram, Trichy Taluk and District. The Writ Petition was dismissed observing that the land in question belongs to the Railways and therefore, it was open to the Railways to take appropriate action.

3.It appears, later on, the Highways Department issued a notice dated 18.06.2019, for evicting the members of the appellant association, and this became subject matter of challenge in W.P.No.18345 of 2019.

4.We may point out that the Writ Petition, giving rise to the present Appeal, had been filed through one Mr.K.Rajan, as Secretary of the Association, and it is stated by the learned counsel for the Appellant that it is Mr.R.Madurai Balan, who has now been inducted as Secretary after the passing away of Mr.K.Rajan.

5.The learned counsel for the Railways has invited the attention of this Court to the order, dated 24.07.2019, in W.P.No.18345 of 2019, filed by the appellant, against the show cause notice issued by the Highways Department for eviction.

The order being a short one, is extracted hereunder for ready reference:

"The above writ petition has been filed by the petitioner to issue a Writ of Mandamus forbearing the respondents from evicting the members of the petitioner Association from their houses in Survey No.17/3, "L" Block, K.Abhisekapuram, Trichy Taluk and District pursuant to the show cause notice dated 18.06.2019.

2. At the outset, Mr.V.Jayaprakash Narayanan, learned Government Pleader (i/c) appearing for respondent Nos.1 to 3, 5 and 6 raised a preliminary objection with regard to the maintainability of the writ petition stating that the writ petition filed by the Association canvassing the cause of encroachers is not maintainable. Further, learned Government Pleader (i/c) submitted that even the encroachers would be removed from the encroached property only after following due process of law. The said submission is recorded.

3. The learned counsel for the petitioner submitted that recording the submission made by the learned Government Pleader (i/c), the writ petition may be closed.

4. Since the learned Government Pleader (i/c) submitted that the encroachers will be and hereby is confirmed and this Civil Miscellaneous Appeal is dismissed. removed only after following due process of law, the writ petition is closed and we are not rendering any finding with regard to the filing of the writ petition by the Association. No costs. Consequently, W.M.P.No.17702 of 2019 is also closed."

6.The learned counsel for the appellant comes up with an explanation that the second Writ Petition had to be filed on account of show cause notice for eviction having been issued by the Highways Department, whereas, in the earlier proceedings, the same came to be terminated on the premise that the land belongs to the Railways Department. It is, therefore, submitted that the members of the appellant association, who were seeking benefit, as small dwellers, from the State Government, are now being sought to be evicted in the aforesaid manner, without any process of rehabilitation being offered by the State Government.

7.We have considered the submissions raised and what we find is that the members of the appellant association have been unable to establish their title or ownership over the land in question and whether the land belongs to the Railways or to the Highways Department will not make any difference. In the said background, the subsequent order, dated 24.07.2019, would be and hereby is confirmed and this Civil Miscellaneous Appeal is dismissed. binding, inasmuch as both the Highways Department as well as the Railways are party respondents in the said Writ Petition.

8.The present Writ Appeal, therefore, is virtually an infructuous exercise and no relief can be granted on account of the intervention order dated 24.07.2019.

9.The learned counsel for the appellant then contends that the appellant association should be permitted to approach the State Government for such relief of rehabilitation that may be permissible in law.

10.It is for the appellant association to approach the State Government and it will be open to the State Government to take such steps as may be available in law. So far as the present Appeal is concerned, the same, as indicated above, does not survive for being entertained. The Writ Appeal is, accordingly, consigned to records. No costs. Connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1.The Secretary to Government,
Housing & Urban Development Department,
Secretariat,
Chennai-600 009

2.The District Collector,
Trichy District, Trichy.

3.Executive Engineer,
Tamil Nadu Slum Clearance Board,
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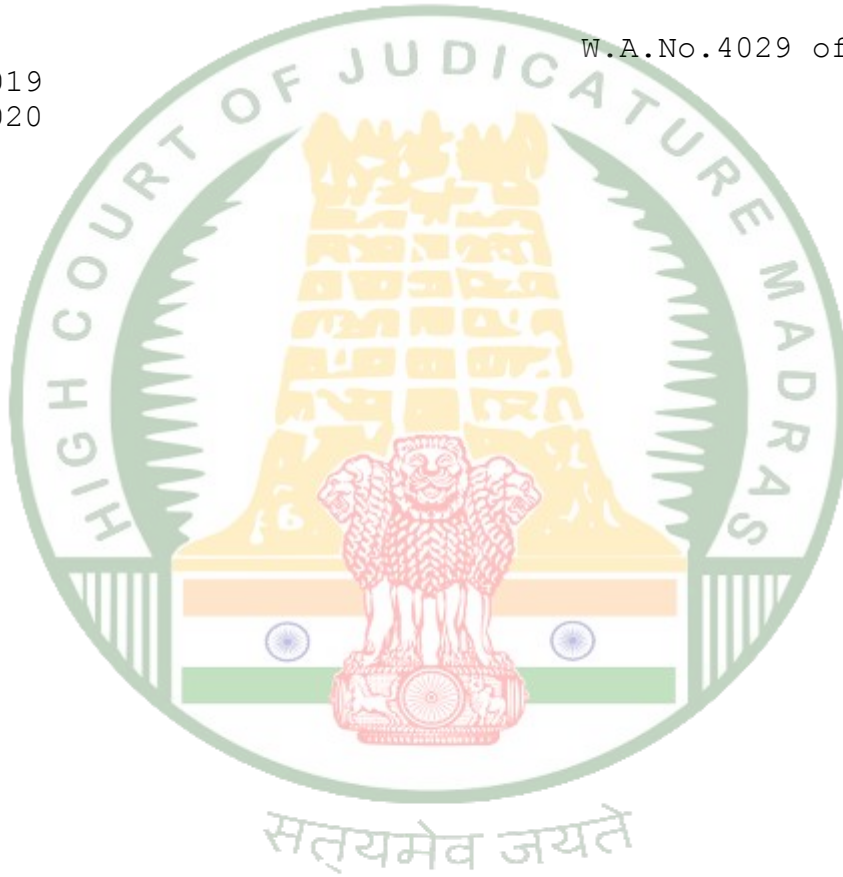
5.Assistant Divisional Engineer,
Highways Department,
Trichy-20

6.The Southern Railways,
rep.by its General Manager,
Chennai-600 003

+1 cc to Mr.P.T.Ramkumar Advocate sr98554
+1 cc to M/s.C.S.Associates SR.NO. 97839dt 03/02/2020

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W.A.No.4029 of 2019



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