

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.9425 of 2017

P.Dinesh Kumar

... Petitioner

Vs.

1. The District Collector,
Kancheepuram, Kancheepuram District.
2. The Chief General Manager,
Tamil Nadu Road Development Company Limited,
Raja Annamalaipuram,
Chennai-600 028.
3. The Senior Manager,
Tamil Nadu Road Development Company Limited,
Operation and Maintenance,
125/126, 1st Floor,
Rajiv Gandhi Salai,
Perungudi, Chennai-600 096.
4. P.Gopalakrishnan
5. P.Anandan
6. The Divisional Engineer,
Highways Department,
Chengalpattu Division.

(Sixth Respondent impleaded vide Order
dated 12.12.2017 passed in
W.M.P.No.31970 of 2017 in W.P.No.9425 of 2017)

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the second respondent herein to remove the illegal construction made by the fourth and fifth respondents herein in Survey No.24/1A which is coming under the purview of Road, which clearly reveals that from the 'A' Register in respect of Thiruvidanthai Village No.45, Chengalpattu Taluk, Kancheepuram District.

For Petitioner : Mr.P.Gurunathan

For Respondents: Mr.S.N.Parthasarathy,
Govt. Advocate for RR-1 and 6
Mr.M.Sivavarthanan for RR-2 & 3
No appearance for RR-4 and 5

ORDER

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

The Petitioner has filed this Writ Petition for issuance of a Writ of Mandamus to direct the Second Respondent herein to remove the illegal construction made by the Fourth and Fifth respondents herein in Survey No.24/1A which is coming under the purview of "Road", which clearly reveals from the 'A' Register in respect of Thiruvudanthai Village No.45, Chengalpattu Taluk, Kancheepuram District.

2. Heard the Learned Counsel for the Petitioner, the learned Government Advocate for the Respondent Nos.1 and 6 and also the Learned Counsel for Respondent Nos.2 and 3. Though a Learned Counsel had entered appearance for the Fourth and Fifth Respondents, there is no representation for them.

3. According to the Petitioner, he is the owner of the property, namely, all that piece and parcel of the Land situated in No.45, Kunmukkadu @ Thiruvudanthai Village, Chengalpat Taluk, Kancheepuram District, comprised in Survey No.24/6A, measuring 0.04.5 Hectare or 0.11 cents or thereabout, Patta No.1948, dated 18.06.2009 and the Land being bounded on the North by: Property comprised in Survey No.24/1A, South by: Property comprised in Survey No.24/5A measuring 5 cents, East by: Survey No.24/1A and on the West by: Survey No.25/2 and 25/4A, situated within the Registration District of Chengalpet and Sub-Registration District of Thiruporur.

4. The stand of the Petitioner is that adjacent to the abovesaid Petitioner's property, the Respondent Nos.4 and 5 are residing at Kunmukkadu, next to Coastal Paradise (Villa House) making an illegal construction in Survey No.24/1A, which is coming under the purview of the 'Road', which clearly reveals from 'A' Register in respect of Thiruvudanthai Village No.45. The aforesaid Road, called as East Coast Road, is the prime connectivity Road between the Southern States and the State Capital. As a matter of fact, the Petitioner preferred a complaint before the Second Respondent/Chief General Manager of Tamil Nadu Road Development Company Limited in person on 24.02.2017. The Second Respondent made an Endorsement on the Petitioner's complaint, stating that, "ECR, KM 34/100y; tyJ g

[wk; BK WK with RCE pillars-cld; upto Road Level constructed stopped the construction".

5. The grievance of the Petitioner is that not even a single step is taken by the Second Respondent in respect of an illegal construction made by the Respondent Nos.4 and 5. Further, because of the Encroachments made by the Respondent Nos.4 and 5, the Petitioner is personally affected. Left with no other option, the Petitioner has filed the present Writ Petition for the relief stated supra.

6. In response, the Learned Counsel for the Respondent Nos.2 and 3 submitted that the Senior Manager (P & OM) of the Second Respondent/Tamil Nadu Road Development Company Limited had addressed a communication to the Divisional Engineer, Construction and Maintenance, Highways Department, Chengalpattu Division, Chengalpattu, (Competent Authority), dated 12.08.2017, wherein it is mentioned as under:

"The road stretch from Akkarai to Pondicherry is being maintained as toll road by TNRDC since 2000. But, the owner of the land is Highways Department. Any encroachments in the road portion between Akkarai to Pondicherry has to be removed/evicted by the owner of the land, ie. Highways Department.

In this regard, we would like to bring to your kind notice that, the Highways land at Survey No.24/1A at Thiruvidanthai Village at ECR, which belongs to Highways Department has been encroached by Mr.Gopalakrishnan and was involved in illegal construction in the said Government land. Moreover, Mr.P.Dinesh Kumar, the nearby land owner of the land at Survey no.24/6A had filed a writ petition, praying the Hon'ble High Court of Madras to direct Mr.Gopalakrishnan to vacate the illegal construction from the Highways land immediately.

In this connection, Highways Department is the owner of the above mentioned land at Survey No.24/1A, TNRDC had taken all possible steps to evict the illegal construction at highways land at Survey No.24/1A, by sending letter to the Police Inspector, and filing FIR at Kelambakkam Police Station. Copy of the same is enclosed herewith.

Therefore, at the above encroachment is a court case, at it is kindly requested to

look into this matter and to take appropriate action to evict the encroachment/stop the construction activities in the Highways land at Survey No.24/1A at the earliest possible, as it may create accidents to the road users."

7. Learned Government Advocate appearing for the Respondent Nos.1 and 6, by filing counter affidavit of the Sixth Respondent, submits that a 'Report' was obtained from the Revenue Officials, which shows that Survey No.24/1A in the Revenue Records is classified as Government Poramboke, and mentioned as "Salai" (Road). Further, East Coast Road Project, widening from two lane to four lane, is developed by the Second Respondent-Tamil Nadu Road Development Company and also being maintained by the Second Respondent till date. Indeed, the Petitioner's Land is located at Kunnukkadu in between Km 34/100 - 34/300 of East Coast Road and the Road development work for the above stretch was completed on 31.01.2017.

8. The Learned Government Advocate for Respondent Nos.1 and 6 further brings it to the notice of this Court that Assistant Engineer(H), Thirukkalukundram and the Assistant Divisional Engineer (H), Chengalpattu, made a request in writing to Tahsildar, Thiruporur, vide Letter No.36/2018, dated 14.04.2018 and LA/ADE/dated 30.05.2018 to measure the Land and furnish Report regarding the 'Encroachment'. Further, based on the 'Report' received from the Tahsildar, Thiruporur, in Letter No.1530/2018/B2, dated 22.06.2018, the alleged Encroachment in Survey No.24/1A of an extent of 482 meters is Government Poramboke as "Salai" in the Revenue Records and the Encroachers are, namely Mr.Gopal, S/o Bakkirissamy (Cement Seat House), Tmt.Vijaya, W/o Bakkirisamy Coconut Leaf Hut (2 Nos.) in Survey No.24/1B1, and there is no Encroachment, which belongs to Highways Department.

9. By way of Reply, the Learned Counsel for the Petitioner points out that the Petitioner had addressed a letter dated 24.02.2017 to the Second Respondent/Chief General Manager of Tami Nadu Road Development Company Limited, whereby and whereunder, the Petitioner had mentioned that an illegal construction was going on in Government property at ECR Thiruvidanthai Village, Chengalpet Taluk, Kancheepuram District, which is exactly in front of the Petitioner's registered property in Survey No.24/6A and in this regard, he made a request to stop the activity immediately and take appropriate action to avoid it in future also.

10. Be it noted that Section 28 of the Tamil Nadu Highways Act, 2001, under the caption "Prevention of Encroachment" reads as under:

"Section 28. Prevention of encroachment:--(1) The Highways Authority or any person authorised by it in this behalf shall, at such time as may be considered necessary, conduct such checks and periodical inspection of the highway boundaries, with the view to ensure the prevention of unauthorised encroachment and the removal of such encroachment.

(2) The Highways Authority or any person authorised by it in this behalf, may --

(i) remove, without any notice, any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching the highway or in any area where the construction or development of a highway is undertaken or proposed to be undertaken;

(ii) remove any immovable structure, whether permanent or temporary in nature, encroaching the highway or in the area vested with Government under this Act, after issuing a show cause notice against such removal, returnable within a period of seven days from the date of receipt thereof:

Provided that any representation received within the time limit shall be considered by the authority or officer concerned before passing final orders."

11. In view of the crystalline position spelt out in Section 28 of the said Act, this Court, to prevent aberration of justice and in furtherance of substantial cause of justice and keeping in mind the entire gamut of the facts and circumstances of the instant case in an integral manner, directs the Sixth Respondent/Divisional Engineer, Highways Department, Chengalpet Division, to inspect the subject property and in case of any illegal construction in front of the Petitioner's registered property bearing S.No.24/6A, as mentioned in the Petitioner's Representation, dated 24.02.2017, take necessary steps for removing such Encroachment if any, after issuance of necessary Show Cause Notice to the Encroachers and after obtaining their Representation, either orally or in writing, within one week from the date of receipt of a copy of this order and to pass

necessary orders within a period of seven days from the date of receipt of a copy of such Representation, if any, as per Section 28(2) of the said Act. Later, the Sixth Respondent shall also look into the said Representation, if any of the Petitioner also and dispose of the same by passing a reasoned and speaking order by meeting out the points, both factually and legally, if any raised by the perpetrated Encroachers by adhering to the Principles of Natural Justice, within a period of one week thereafter. The said order shall be passed by the Sixth Respondent in a free, just, unbiased and in an objective and dispassionate manner, of course, untrammelled and uninfluenced by any of the observations made by this Court in this Writ Petition. If the Sixth Respondent in regard to the removal of the Encroachment made by the Encroachers, requires Police assistance, that may also be sought for by the Sixth Respondent from the concerned Jurisdictional Police and the said Police shall lend their assistance and co-operation in regard to the removal of the 'Encroachment' in issue.

12. With the above observations and directions, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

CS
To

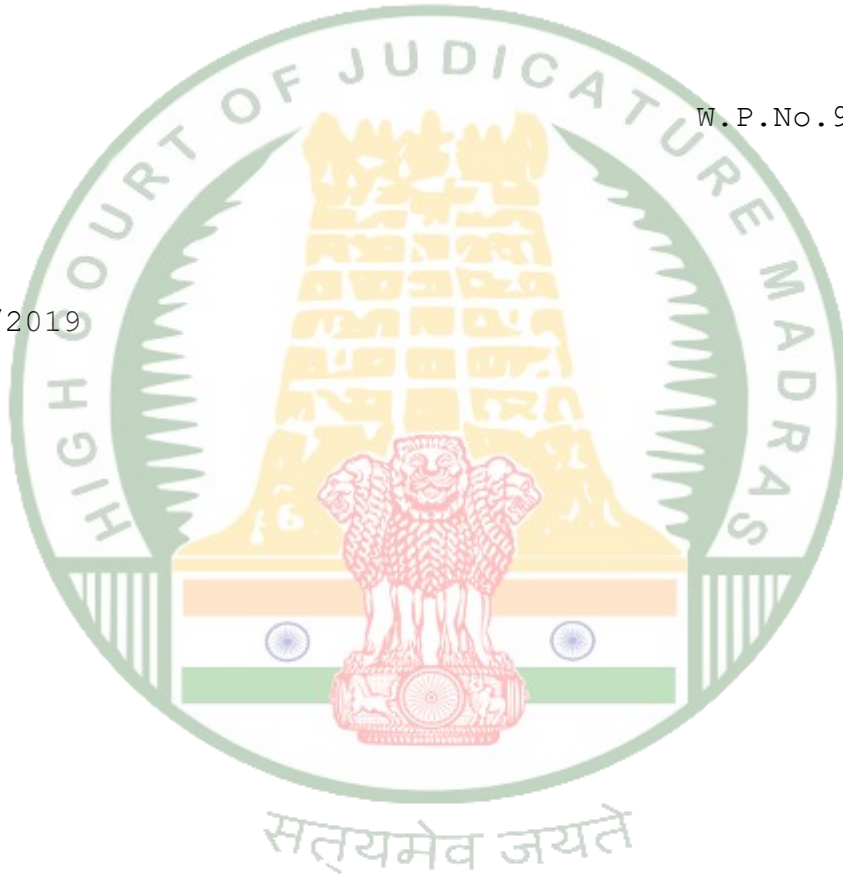
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Chengalpattu Division.

+lcc to Mr.M.Sivavarthanan, Advocate sr.3659
+lcc to Mr.P.Gurunathan, Advocate sr.3731
+lcc to th Government Pleader sr.4003

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