

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.11.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.30992/2019 & WMP.No.31094/2019

S.Govindan

... Petitioner

Versus

1.The Chief Engineer
Construction and Maintenance
Highways Department
Chennai 25.

2.The Authorised Officer
Assistant Zonal Engineer
Construction and Maintenance Highways
Villupuram.

3.L.Palani

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus forbearing the respondents, their subordinates or any person claiming authority through them from in any manner interfering with the lawful possession evicting dispossessing the petitioner at No.27, Mariamman Koil street, Konakipalayam village, Panapattu Post, Villupuram Taluk and District except by due process of law.

For Petitioner : Mr.D.Senthilkumar

For R1&R2 : Mr.R.Udhayakumar, AGP

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

(1)By consent, the writ petition is taken up for final disposal. Mr.R.Udhayakumar, learned Additional Government Pleader accepts notice on behalf of the respondents 1 and 2.

(2)The petitioner claims to be the owner of Punja land admeasuring to an extent of 37 cents and 2 cents respectively in S.Nos.459/8 and 459/9 of Panapattu Village,

Villupuram Taluk and District, through a registered Sale Deed bearing No.2658/1987 dated 26.11.1987 registered on the file of the Joint Sub Registrar No.2, Villupuram and thereafter, he has put up a small superstructure and claims to be in possession of the same.

- (3) The learned counsel for the petitioner would submit that the said superstructure is also subject to statutory levies. The grievance now expressed by the petitioner is that the official respondents, under the garb of removing the encroachments from TS.No.497, of the very same place, are interfering with the petitioner's peaceful possession and enjoyment of the land and superstructure and taking emergent steps to demolish the superstructure by invoking the provisions of the Tamil Nadu Highways Act, and hence, the petitioner is constrained to approach this Court, by filing the present writ petition.
- (4) Mr/R.Udhayakumar, learned Additional Government Pleader appearing for respondents 1 and 2, on instructions, would submit that the petitioner and another have encroached upon the State Highways land in TS.No.497 and action is being taken strictly in accordance with law.
- (5) This Court has considered the rival submissions and also perused the materials placed before it.
- (6) It is relevant to extract section 28 of the Tamil Nadu Highways Act:-

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 authorised encroachment and the removal of such encroachment.

[2] The Highways authority or any person authorised by it in his behalf-

[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 removal, returnable within a period of seven days from the date receipt thereof;

Provided that any representation received within the time shall be considered

by the authority or officer concerned before passing final orders.

- (7) This Court, taking into consideration, the above facts and circumstances and without going into the merits of the claim projected by the petitioner, either in his representation or in this writ petition, permits the writ petitioner to submit his response to the notices dated 17.07.2017 and 13.09.2017 respectively, in Letter No.291/2017//tm/ along with supporting and authenticated documents, within a period of two weeks from the date of receipt of a copy of this order to the 2nd respondent and the 2nd respondent, upon receipt of the same, is directed to consider the same and also provide an opportunity of personal hearing to the petitioner and thereafter pass appropriate orders in accordance with law within a further period of four weeks thereafter and communicate the decision taken to the petitioner and till such time, defer further decision in terms of the above cited notices dated 17.07.2017 and 13.09.2017 respectively. It is made clear that the petitioner, till the disposal of the representation by the 2nd respondent, shall not create any third party rights in respect of the land and superstructure in question.
- (8) The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

AP
To

- 1.The Chief Engineer
Construction and Maintenance
Highways Department
Chennai 25.
- 2.The Authorised Officer
Assistant Zonal Engineer
Construction and Maintenance Highways
Villupuram.

+1cc to M/s.D.Senthilkumar, Advocate Sr.91715
+1cc to the Government Pleader Sr.91988

WP.No.30992/2019

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