

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.11.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.31740, 31746, 31762 & 31764/2019 & WMP.Nos.31946, 31950,
31962, 31978, 31982, 31984, 31986 & 31989/2019

Mrs.Chennammal	..	Petitioner in WP.No.31740/2019
Mr.Devaraj	..	Petitioner in WP.No.31746/2019
Mrs.Radha	..	Petitioner in WP.No.31762/2019
Mr.M.A.Mujub Rahman	..	Petitioner in WP.No.31764/2019

Versus

The Assistant Engineer [Highways]
Construction and Maintenance
Tambaram Division, Tambaram,
Chennai 600 042. .. Respondent in all the writ petitions

Prayer in WP.No.31740/2019:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the respondent related to the impugned notice No.802/Encroachment/2019 / Asst.Engineer/ dated 18.10.2019 in respect of the property situated at No.8/17, Velacherry Main Road, Vijaya Nagaram, Medavakkam, Chennai-600 100 Tambaram Taluk, Kancheepuram District, comprised in Natham Survey No.276/2, having an extent of 2677 sq.ft., together with two houses, shops, and electricity connection and quash the same.

Prayer in WP.No.31746/2019:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the respondent related to the impugned notice No.802/Encroachment/2019 / Asst.Engineer/ dated 18.10.2019 in respect of the property situated at No.8/20, Velacherry Main Road, Vijaya Nagaram, Medavakkam, Chennai-600 100 Tambaram Taluk, Kancheepuram District, comprised in Natham Survey No.276, New S.No.278/2, having an extent of 2325 sq.ft., together with houses and electricity connection and quash the same.

Prayer in WP.No.31762/2019:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the respondent related to the impugned notice No.802/Encroachment/2019 / Asst.Engineer/ dated 18.10.2019 in respect of the property

situated at No.8/19, Velacherry Main Road, Vijaya Nagaram, Medavakkam, Chennai-600 100 Tambaram Taluk, Kancheepuram District, comprised in Natham Survey No.276, Block No.2A, an extent of 3 cents together with houses and electricity connection and quash the same.

Prayer in WP.No.31764/2019:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the respondent related to the impugned notice No.802/Encroachment/2019 / Asst.Engineer/ dated 18.10.2019 in respect of the property situated at No.8/232, Velacherry Main Road, Vijaya Nagaram, Medavakkam, Chennai-600 100 Tambaram Taluk, Kancheepuram District, comprised in Natham Survey No.276, having an extent of 3372 square feet together with houses, shops and electricity connection and quash the same.

For Petitioners in
all WPs : Mr.M.Velmurugan

For Respondent
in all WPs : Mr.R.Udhayakumar, AGP

COMMON ORDER

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

(1) By consent, the writ petitions are taken up for final disposal. Mr.R.Udhayakumar, learned Additional Government Pleader accepts notice on behalf of the respondent.

(2) WP.No.31740/2019:- The petitioner claims to have purchased 2677 sq.ft., of land as well as the superstructure consisting of two houses and five shops, in Village Site S.No.276/2, Vijaya Nagaram, Medavakkam Village, Tambaram Taluk, Kancheepuram District, vide registered Sale Deed dated 13.02.2016 bearing Doc.No.2766/2016 registered on the file of the Joint Sub Registrar, South Madras, and claims to be in possession and enjoyment of the same, right from the date of purchase and it is also subjected to statutory levies.

(3) WP.No.31746/2019:- The petitioner claims to have purchased 2325 sq.ft., of land as well as the superstructure consisting of a house in Village Site S.No.276, New S.No.278/2, Vijaya Nagaram, Medavakkam Village, Tambaram Taluk, Kancheepuram District, vide registered Sale Deed dated 12.12.1994 bearing Doc.No.4286/1994 registered on the file of the Joint Sub Registrar, South Madras, and claims to be in possession and enjoyment of the same, right from the date of purchase and it is also subjected to statutory levies.

- (4) WP.No.31762/2019:- The petitioner claims to be in possession of the land admeasuring to an extent of 3 cents in Natham S.No.276, Block No.2A by virtue of the Assignment Patta issued by the jurisdictional Special Tahsildar, in favour of the husband of the petitioner and after his demise on 03.03.1996, the petitioner along with her son and daughter, had succeeded to the said estate and it is also the case of the petitioner that while her husband was alive, he had also put up a superstructure and it is also subjected to statutory levies.
- (5) WP.No.31764/2019:- The petitioner claims to have purchased 3372 sq.ft., of land as well as the superstructure in the form of house and shops in Village Site S.No.276, Vijaya Nagaram, Medavakkam Village, Tambaram Taluk, Kancheepuram District, vide registered Sale Deed dated 02.11.1983 bearing Doc.No.3392/1983 registered on the file of the Joint Sub Registrar, South Madras, and claims to be in possession and enjoyment of the same, right from the date of purchase and it is also subjected to statutory levies.
- (6) Mr.M.Velmurugan, learned counsel for the petitioners would submit that all of a sudden, the respondent has issued the impugned notices dated 18.10.2019, under the provisions of the Tamil Nadu Highways Act treating the petitioners as encroachers and calling upon them to remove the same and in response to the same, the petitioners submitted representations dated 23.10.2019 to the respondent and despite receipt and acknowledgment, further action is being contemplated by the respondent as to the removal of the superstructures in the form of demolition of the existing superstructures and therefore, the petitioners are constrained to approach this Court, by filing the present writ petitions.
- (7) It is further submitted by the learned counsel for the petitioners that the petitioners / their legal heirs remain in possession and enjoyment of the properties in question for very many years and would contend that admittedly, the lands are classified as "Village Site" and all of a sudden, they sought to be evicted / dispossessed without properly following the due process of law on the alleged ground of encroachment and in response to the impugned notices, the petitioners have also given representations and without considering the representations, they are about to dispossess and hence, they have come forward to file the present writ petitions.
- (8) Per contra, Mr.R.Udhayakumar, learned Additional Government Pleader appearing for the respondent would submit that after effecting proper survey, it was found out that the lands in question belongs to Highways Department and they require the

same for road expansion and therefore, action is being taken strictly in accordance with law and prays for dismissal of these writ petitions.

(9) This Court has considered the rival submissions and also perused the materials placed before it.

(10) During the course of arguments, this Court has put a specific query to the learned counsel for the petitioners as to whether the superstructures put up on the lands in question are authorised / unauthorised / deviated and the learned counsel is unable to come out with any response, may be on account of for want of proper instructions.

(11) 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.'

(12) This Court, taking into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioners, permits each of the petitioners to submit one more detailed representation by enclosing relevant and authenticated documents as to their proof of title, possession and enjoyment for a long period of time, within a period of two weeks from the date of receipt of a copy of this order to the respondent herein, who upon receipt of the same, is directed to consider the said representations on merits and in accordance with law, in the light of the proviso to section 28[1] & [2][ii] of the Tamil Nadu Highways Act, within a further period of six weeks thereafter and communicate the decision taken, to the petitioners herein and till such time, shall defer further decision in terms of the impugned notice dated 18.10.2019. It is also made clear that the petitioners, till the disposal of the representations by the respondent, shall not create any third party rights in respect of the lands and superstructures in question.

(13) The Medavakkam Town Panchayat, after putting the petitioners on notice, shall cause inspection of the superstructures put up by them in existence on the lands in question, and if it is found that the superstructures are unauthorised/deviated, shall take appropriate action in accordance with law including the provisions of the Tamil Nadu Combined Development Building Rules, 2019.

(14) The writ petitions stand disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

AP

To

The Assistant Engineer [Highways]
Construction and Maintenance
Tambaram Division, Tambaram,
Chennai 600 042.

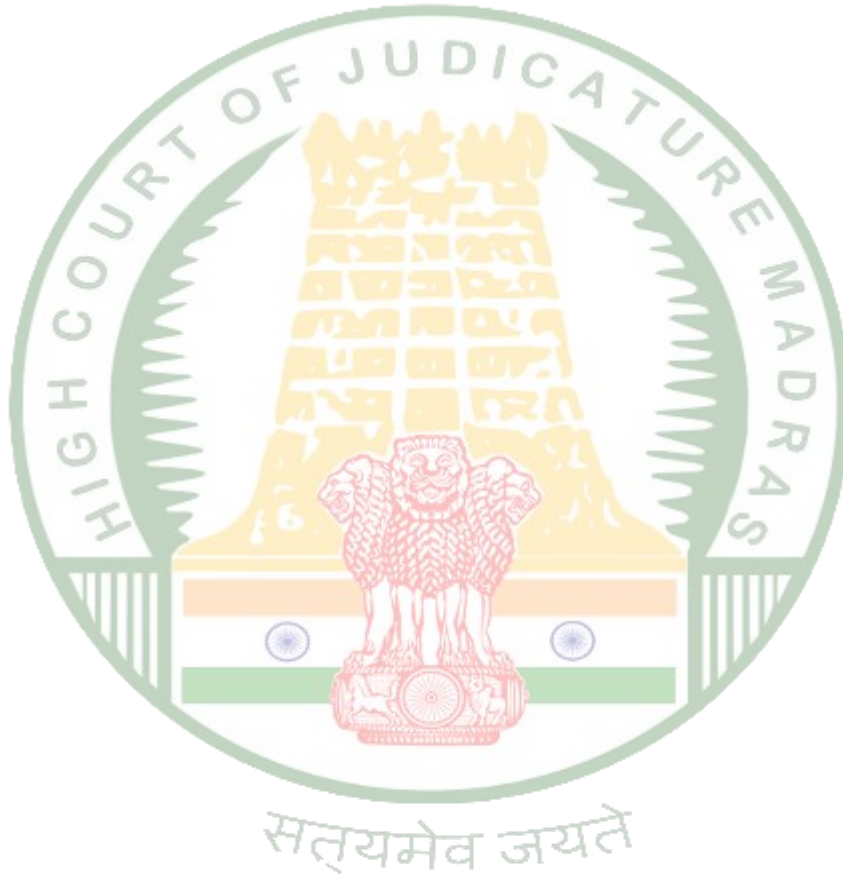
Copy To:-

The Medavakkam Town Panchayat
No.40, Velacherry Main Road
Gowrivakkam, Sembakkam
Chennai 600 073.

+4cc to Mr.M.Velmurugan, Advocate SR.93413, 93414,93415,93416
+1cc to the Government Pleader SR.93776,93777,93778

WP.Nos.31740, 31746,
31762 & 31764/2019

RV (CO)
CB(18/12/2019)



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