



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.10.2019
CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) No.22751 of 2019

and

W.M.P. (MD) No.19505 of 2019

I.Sundaralingam

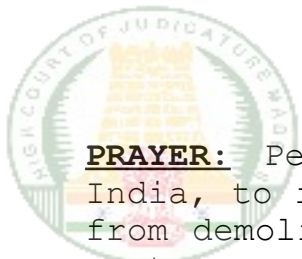
... Petitioner

-vs-

1. The Divisional Engineer (Highways)
Construction and Maintenance
Highways Department
Nagercoil
Kanyakumari District
2. The Assistant Divisional Engineer (Highways)
Construction and Maintenance
Highways Department
Nagercoil
Kanyakumari District
3. The Assistant Director
Town Panchayats
Nagercoil
Kanyakumari District
4. The Tahsildar
Agasteeswaram Taluk
Madhusudhanapuram North Village
Nagercoil
Kanyakumari District
5. The Executive Officer
Thengampudur Panchayat
Thengampudur Post
Kanyakumari District
6. The Assistant Executive Engineer
Panchayat Division
Nagercoil
Kanyakumari District

7. Annu G. Sivanesan

... Respondents



PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus forbearing the respondents herein from demolishing or removing the petitioner's north-south and east-west compound wall situated in his patta property in Sy.No.211/7 to an extent of 11 cents in Madhusudhanapuram North Village, Agasteeswaram Taluk, Nagercoil, Kanyakumari District under the guise of removal of encroachment in Sy.Nos.212/2, 212/3 and 195 of Madhusudhanapuram North Village Agasteeswaram Taluk, Nagercoil, Kanyakumari District, in violation of the principles of natural justice without proper measurements and without properly ascertaining the alleged encroachment.

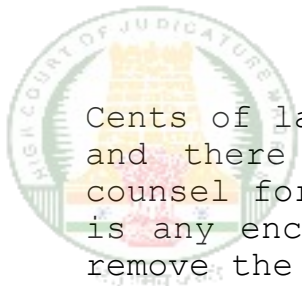
For Petitioner : Mr.V.Balaji
For Respondents : Mr.A.K.Baskarapandian
Special Government Pleader for R1 to R4 & R6
Mr.K.Mu.Muthu
Additional Government Pleader for R5

O R D E R

[Order of the Court was made by T.S.SIVAGNANAM, J.]

This writ petition has been filed to forbear the respondents from demolishing or removing the petitioner's north-south and east-west compound wall situated in his patta land comprised in Survey No.211/7, measuring an extent of 11 Cents, in Madhusudhanapuram North Village, Agasteeswaram Taluk, Nagercoil, Kanyakumari District, under the guise of removal of encroachment in Survey Nos.212/2, 212/3 and 195 of Madhusudhanapuram North Village, Agasteeswaram Taluk, Nagercoil, Kanyakumari District, in violation of the principles of natural justice without proper measurements and without properly ascertaining the alleged encroachment.

2. According to the petitioner, the Tahsildar, Agasteeswaram Taluk / fourth respondent, by proceedings dated 24.07.2019, addressed to the Assistant Divisional Engineer (Highways), Construction and Maintenance, Highways Department / second respondent has clearly stated that the petitioner is the Pattadar in respect of the land in Survey No.212/3, measuring an extent of 0.03.15 Ares and Patta No.5889 has been issued. After stating so, the Tahsildar has stated that upon survey, it has been found that the petitioner has put up a 3 Feet height compound wall, which is an encroachment. The Tahsildar has also noted that the encroachment needs to be removed by taking Police assistance, because even while conducting survey, the petitioner had created problem to the Officers. Along with the communication dated 24.07.2019, the Tahsildar / fourth respondent has enclosed a copy of Form-I and sketch. The petitioner's repeated submission is that he owns more than 10 Cents of land and the construction put up him is only on 07



Cents of land and 02 Feet of land is left vacant around the building and there is absolutely no encroachment. Further, the learned counsel for the petitioner, on instructions, submitted that if there is any encroachment in the Highways land, then the Authorities may remove the same.

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3. The learned Special Government Pleader, who accepts notice for the respondents 1 to 4 and 6 has produced original files and the Officers concerned are also present in the Court.

4. The learned Special Government Pleader submitted that no action is being initiated for removal of any construction in Survey No.212/3 and what is being removed is only the encroachments made in the Highways land in Survey No.195.

5. The learned counsel appearing for the petitioner submitted that earlier there was a direction issued in W.P.(MD) No.3835 of 2019 filed by one Amutha, who is none other than the wife of the writ petitioner, wherein, the Court had recorded the submission of the Tahsildar / fourth respondent and direction for survey was granted, with a further direction to lay tar road in Iduvai. Till such time, direction was issued to the fifth respondent, namely, Appu @ Sivanesan not to precipitate the matter.

6. The proceedings of the Tahsildar / fourth respondent, dated 24.07.2019, addressed to the Assistant Divisional Engineer (Highways), Construction and Maintenance, Highways Department / second respondent, clearly shows that survey has been conducted and the encroachment in the Highways land has been earmarked. Therefore, we are of the view that the respondents may be permitted to carryout the eviction process in terms of the area earmarked in the survey sketch. In the event the petitioner objects to the same, it is well open to the officials to lodge a Police complaint against the petitioner.

7. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

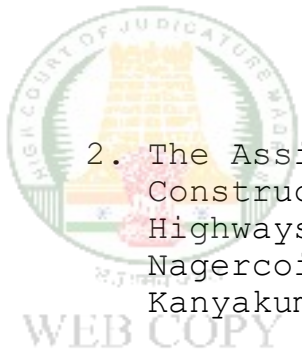
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Sub Assistant Registrar(CS)

To

1. The Divisional Engineer (Highways),
Construction and Maintenance,
Highways Department,
Nagercoil, Kanyakumari District.

<https://hcservices.ecourts.gov.in/hcservices/>



2. The Assistant Divisional Engineer (Highways),
Construction and Maintenance,
Highways Department,
Nagercoil,
Kanyakumari District.
3. The Assistant Director,
Town Panchayats,
Nagercoil,
Kanyakumari District.
4. The Tahsildar,
Agasteeswaram Taluk,
Madhusudhanapuram North Village,
Nagercoil,
Kanyakumari District.
5. The Assistant Executive Engineer,
Panchayat Division,
Nagercoil,
Kanyakumari District.

+1 CC to SPL GP (SR-95156[F] dated 31/10/2019)

W.P. (MD) No.22751 of 2019

and

W.M.P. (MD) No.19505 of 2019

25.10.2019

krk

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