

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Writ Petition Nos.8180 & 21436 of 2019
and W.M.P. Nos.20637 & 20640 of 2019

A.K.Mumtaj Begum ... Petitioner in W.P. No.8180 of 2019

Viswanathan ... Petitioner in W.P. No.21436 of 2019

Vs

1.The District Collector,
Cuddalore District,
Cuddalore.

2.The Assistant Engineer,
National Highways,
Vridhachalam,
Cuddalore District.

3.Viswanathan

4.Palani ... Respondents in W.P. No.8180 of 2019

1.The Assistant Engineer,
National Highways,
Vridhachalam,
Cuddalore District.

2.Mumtaj Begum ... Respondents in W.P. No.21436 of 2019

Prayer in W.P. No.8180 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing respondents 1 and 2 to evacuate the third respondent in encroachments of the general path and to ensure the petitioner to utilise the same to cultivate the petitioner's land based on the petitioner's representation dated 28.08.2018.

Prayer in W.P. No.21436 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records with respect of the impugned order passed by the first respondent in his Proceedings dated 12.07.2019 in Ka.No.01/2018/U.Pe/dated

12.07.2019 and quash the same, consequently direct the first respondent to survey the entire extent of the property comprised in Survey No.217 at Romapuri Village, Cuddalore District and other lands which are encroached by the second respondent and others and thereafter pass appropriate orders after providing sufficient opportunity to the petitioner and others.

For Petitioner in W.P.
No.8180 of 2019 and for R2 in
W.P. No.21436 of 2019 : Mr.D.Ashok Kumar

For Petitioner in W.P.
No.21436 of 2019 : Mr.Nalliyappan R.

For R1 and R2 in W.P.
No.8180 of 2019 and for : Mr.K.S.Suresh,
R1 in W.P. No.21436 of 2019 : Government Advocate

For R3 & R4 in W.P. No.
8180 of 2019 : Mr.T.Meganathan

COMMON ORDER

[Order of this Court was made by R.SUBBIAH, J]

W.P. No.8180 of 2019 has been filed seeking a direction to respondents 1 and 2 to evacuate the third respondent in encroachments of the general path and to ensure the petitioner to utilise the same to cultivate her land based upon her representation dated 28.08.2018.

W.P. No.21436 of 2019 has been filed challenging the impugned Proceedings Ka.No.01/2018/U.Pe dated 12.07.2019 issued by the first respondent and seeking a direction to the first respondent to survey the entire extent of the property comprised in Survey No.217 at Romapuri Village, Cuddalore District and other lands which are encroached by the second respondent and others and to pass appropriate orders after providing sufficient opportunity to the petitioner and others.

2.Since the issue involved in both the writ petitions are common, these are intertwined and disposed of by way of common order with the consent of either side.

3.The facts of the case in W.P. No.8180 of 2019 are that the petitioner has been cultivating her land, situated at 30 feet road, near NHAI Road and that the general pathway belongs to NHAI, has been used for reaching the petitioner's land. The

grievance of the petitioner is that the land of respondents 3 and 4 is situated near to her land and they have been occupying the general pathway by preventing the petitioner from entering and cultivating her land. In this regard, the petitioner has made a representation to respondents 1 and 2 on 04.07.2018 to take necessary action against the third respondent for removing the encroachment made by respondents 3 and 4 in the government land. Since no action was taken against them, the petitioner is before this Court.

4.The facts of the case in W.P. No.21436 of 2019 are that in the year 2006, the government had issued patta to several persons in Survey No.172/15 Ramapuri Village, Cuddalore District to an extent of 32.50 ares under the scheme of landless people by order dated 14.09.2006. After the assignment, the petitioner and others are enjoying the above said land without any hindrance by constructing a small house in a portion of the said land. While so, the second respondent is having a land in S.No.38/4 adjoining the petitioner's land in S.No.172/15 and by way of encroaching the Highways land, she constructed a building in the above said highways property in S.No.217 and the said property has been let out for rent to third parties and thereby, she has been earning monthly income of Rs.35,000/-. In order to harass the petitioner, the second respondent had filed a suit in O.S. No.53 of 2003 before the District Munsif-cum-Judicial Magistrate, Neyveli seeking relief for declaration and permanent injunction as against the petitioner and others with respect to the above said property. By judgment and decree dated 02.07.2013, the District Munsif cum Judicial Magistrate dismissed the said suit. As against the same, the second respondent has filed an Appeal in A.S. No.1 of 2015 before the Subordinate Judge, Neyveli and the same was also dismissed by judgment and decree dated 24.07.2015. Suppressing the above facts, the second respondent has filed the above writ petition in W.P. No.8180 of 2019 before this Court to evict the petitioner. While so, the first respondent has issued the above proceedings only on the inducement of the second respondent. Therefore, the petitioner is before this Court challenging the same and seeking the above direction.

5.Heard the learned counsel for the petitioners, learned Government Advocate and the learned counsel for R3 and R4 and perused the materials on record.

6.Considering the submissions made by both sides, we are of the opinion that the issue involved in both the writ petitions is nothing, but a disputed question of facts. As the same cannot be agitated before this Court, we are constrained to direct the Assistant Engineer, National Highways, Vridhachalam, Cuddalore District to conduct an enquiry and survey the said lands in the

presence of the parties, by issuing notice to both the petitioners as well as the fourth respondent in W.P. No.8180 of 2019. After enquiry, if he comes to the conclusion that there was an encroachment made in the above lands, he is further directed to remove the encroachment in accordance with law, within a period of 12 weeks from the date of receipt of a copy of this order. With the above directions, the writ petitions stand disposed of. Consequently, connected W.M.Ps are closed. No costs.

Sd/-
Assistant Registrar (CS-III)

// True Copy//

Sub Assistant Registrar

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To

- 1.The District Collector,
Cuddalore District,
Cuddalore.
- 2.The Assistant Engineer,
National Highways,
Vridhachalam,
Cuddalore District.

+lcc to Mr.D.Ashok Kumar, Advocate, SR.No.13363.
+lcc to Mr.T.Meganathan, Advocate, SR.No.12491.

Writ Petition Nos.8180 & 21436 of 2019
and W.M.P. Nos.20637 & 20640 of 2019

AD (CO)
CSR: 10.03.2020

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