

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.14153/2020 & WMP.No.17614/2020

R.Palanivel

.. Petitioner

Versus

1.The District Collector
Namakkal District, Namakkal.

2.The Assistant Divisional Engineer
Constructions and Maintenance
Highways, Rasipuram
Namakkal District.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 2nd respondent in his proceedings No.Ku.No.34/2020/A2 dated 16.09.2020 relating to order of eviction and quash the same and consequently direct the 1st respondent to relocate the petitioner with alternative site and provide compensation for construction of a residential building.

For Petitioner : Mr.P.Rathanavel

For Respondents: Mr.R.Vijayakumar, AGP
for RR1 and 2

ORDER

- (1)By consent, the writ petition is taken up for final disposal and is disposed of by this order.
- (2)Mr.R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of respondents 1 and 2.
- (3)It is the claim of the petitioner that his father had put up thatched she in S.No.19/1, Alavaipatti Village, Rasipuram Taluk, Namakkal District and it is also subject to statutory levies. The petitioner would further state that in terms of G.O.Ms.No.854, Revenue [NM.1[2]] Department dated 30.12.2006, One Time Scheme has been formulated to regularise the

encroachment by granting patta to the people and the Local Body has also made a positive recommendation in favour of the petitioner on 14.06.2007. The petitioner was issued with a notice of eviction on 01.02.2010 and he made a challenge to the same by filing WP.No.11855 of 2010 and vide order dated 12.01.2011, this Court has dismissed the said writ petition.

- (4) It is also brought to the notice of this Court by the petitioner that one K.Pateeswaran had filed WP.No.6730 of 2012 praying for appropriate direction, by directing the 2nd respondent to remove encroachments made by several persons including the petitioner herein in S.No.4, 19/1 and 20 of the said Village and the same was dismissed in the light of the fact of pendency of the Civil Suits in OS.Nos.253 and 255 of 2010 on the file of the District Munsif, Namakkal.
- (5) The learned counsel for the petitioner would submit that all of a sudden, the petitioner has been issued with the Notice of Eviction by the 2nd respondent on 16.09.2020 for which, he has submitted a detailed representation dated 21.09.2020 pointing out the long possession and enjoyment and in the light of the fact that the petitioner belongs to lowest strata of society and economically poor, also prayed for alternative accommodation and despite pendency of the said representation, emergent steps are being taken to dispossess the petitioner from the land in question and hence, prays for appropriate orders.
- (6) Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader appearing for respondents would submit that similar endeavour made by the petitioner in WP.No.11855 of 2010 has ended in dismissal. In the light of the admitted fact that the petitioner is an encroacher, steps are being taken in accordance with law for removal of the encroachment, it cannot be found fault with and hence, prays for dismissal of the writ petition.
- (7) This Court has carefully considered the rival submissions and also perused the materials placed before it.
- (8) It is relevant to extract Section 28 of the Tamil Nadu Highways Act, 2001:-

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 Ac, after issuing a show cause notice against such removal, returnable within a period of seven days from the date of receipt thereof;''

(9)Proviso to sub-section 2[ii] of Section 28 says that any representation received within the time limit shall be considered by the authority or officer concerned before passing final orders.

(10)This Court, taking into consideration the above facts and circumstances, permits the petitioner to submit a detailed representation by enclosing all relevant and authenticated documents as to his claim for possession, to the 3rd respondent within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the 3rd respondent shall consider and dispose of the same in the light of the above statutory provision within a period of two weeks thereafter and communicate the decision taken, to the petitioner and till such time, respondents 2 and 3 shall defer further decision in terms of the impugned Notice dated 16.09.2020. It is made clear that till the disposal of the representation by the 3rd respondent, the petitioner shall not create any third party rights in respect of the land and superstructure in question.

(11)The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

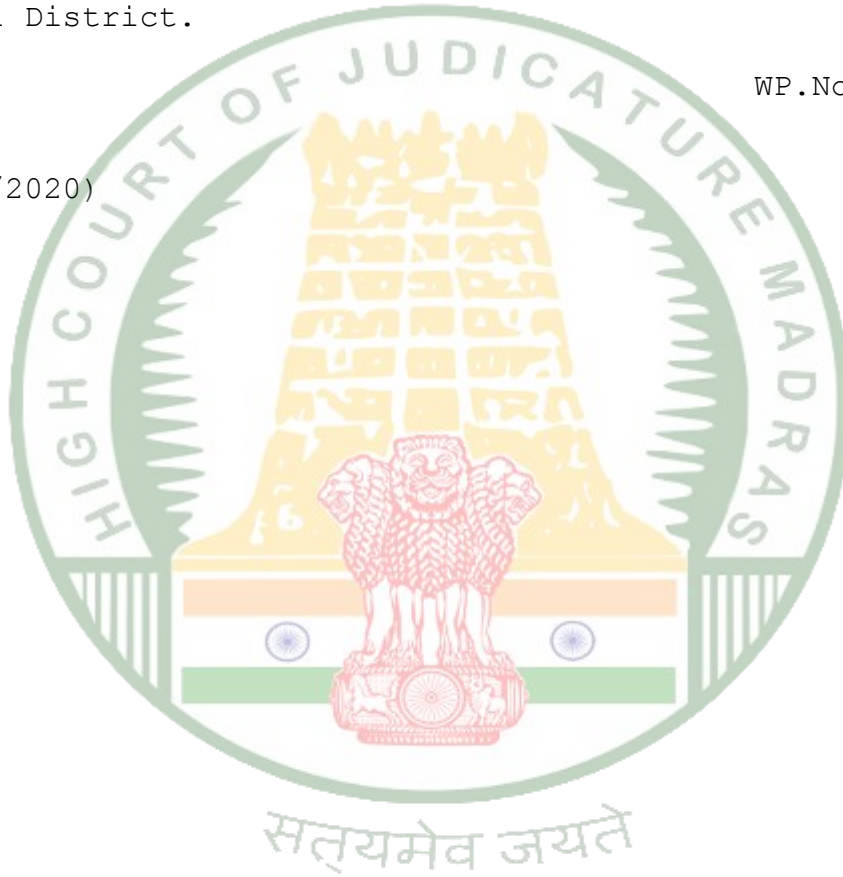
AP

To

- 1.The District Collector
Namakkal District, Namakkal.
- 2.The Assistant Divisional Engineer
Constructions and Maintenance
Highways, Rasipuram
Namakkal District.

WP.No.14153/2020

MP (CO)
RMP (02/11/2020)



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