

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.10.2020

CORAM

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

WP.No.14121/2020 & W.M.P.Nos.17529 & 17530 of 2020

A.Sakthivel.

..Petitioner

Versus

1. The Divisional Engineer,
Tamilnadu Highways Department,
(Construction & Maintenance),
Edapadi, Salem District.
2. The Assistant Divisional Engineer,
Tamilnadu Highways Department,
(Construction & Maintenance),
Edapadi, Salem District.
3. The Junior Engineer,
Tamilnadu Highways Department,
(Construction & Maintenance),
Edapadi, Salem 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 pertaining to the impugned order of the 2nd respondent in Na.Ka.No.17/Encroachment/2020-2021/E.Ni.Vu., dated 10.09.2020 and quash the same and consequently forbear the respondents from interfering with the petitioner's possession of the house and shop premises measuring an extent of 243 Sp.ft comprised in Survey No.644/4 and an extent of 430 Sq.ft comprised in Survey No.644/5 Situated at Chittoor Village, Edapadi Taluk, Salem District.

For Petitioner : Mr.Srinivasa Narayanan

For R1 to R3 : Mr.R.Vijayakumar AGP

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 the respondents.
- (3) The petitioner claims to be the owner of the landed property with the superstructure admeasuring to an extent of 243 sq.ft. comprised in S.No.644/4 and an extent of 430 sq.ft. in S.No.644/5, situate at Chittoor Village, Edappadi Taluk, Salem District and also running a business under the name and style as "Sivasakthi Chicken Centre" and according to the learned counsel for the petitioner, the said land was purchased by the petitioner vide registered Sale Deed dated 18.02.2016 24.09.2010 vide Doc.No.3420 of 2010 registered on the file of the Sub Registrar Office, Jalagandapuram and claims to be in possession and enjoyment. It is the submission of the learned counsel for the petitioner that the said property is also subjected to statutory levies and to his shock and surprise, he was issued with the impugned Notice dated 10.09.2020 by the 2nd respondent as if he has encroached upon the Chittoor Moolakadai - Chittoor State Highways and the said land is required for the purpose of constructing storm water drain. The petitioner making a challenge to the said proceedings/order of the 2nd respondent dated 10.09.2020, filed the present writ petition.
- (4) The primordial submission made by the learned counsel for the petitioner is that in order to respond to the said Notice, the petitioner has submitted his detailed response dated 17.09.2020 by Registered Post Acknowledgment Due and if some semblance of opportunity is provided to the petitioner, he may be in a position to substantiate that the land purchased by him, is not an encroached land and prays for appropriate orders.
- (5) Per contra, Mr. R. Vijayakumar, learned Additional Government Pleader appearing for the respondents would submit that since the act of the petitioner constitute encroachment, action has been initiated by the 2nd respondent by following due process of law.
- (6) This Court has considered the rival submissions and also perused the materials placed before it.
- (7) It is relevant to extract Section 28 of the Tamil Nadu State Highways Act:-

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

Provided that any representation received within the time-limit shall be considered by the authority or officer concerned before passing final orders.'

(8) This Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, either in his response dated 17.09.2020 to the impugned Notice dated 10.09.2020 issued by the 2nd respondent, as well as the contents of the affidavit filed in support of this writ petition, directs the 2nd respondent to take into consideration, the reply/explanation of the petitioner dated 17.09.2020, on merits and in accordance with law and pass appropriate orders within a period of three weeks from the date of receipt of a copy of this order and till such time, shall defer further decision in terms of the impugned Notice dated 10.09.2020. It is made clear that the petitioner, till the disposal of his representation dated 17.09.2020 by the 2nd respondent, shall not create any third party rights in respect of the land in question and the superstructure put up thereon.

(9) The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1.The Divisional Engineer,
Tamilnadu Highways Department,
(Construction & Maintenance),
Edapadi, Salem District.

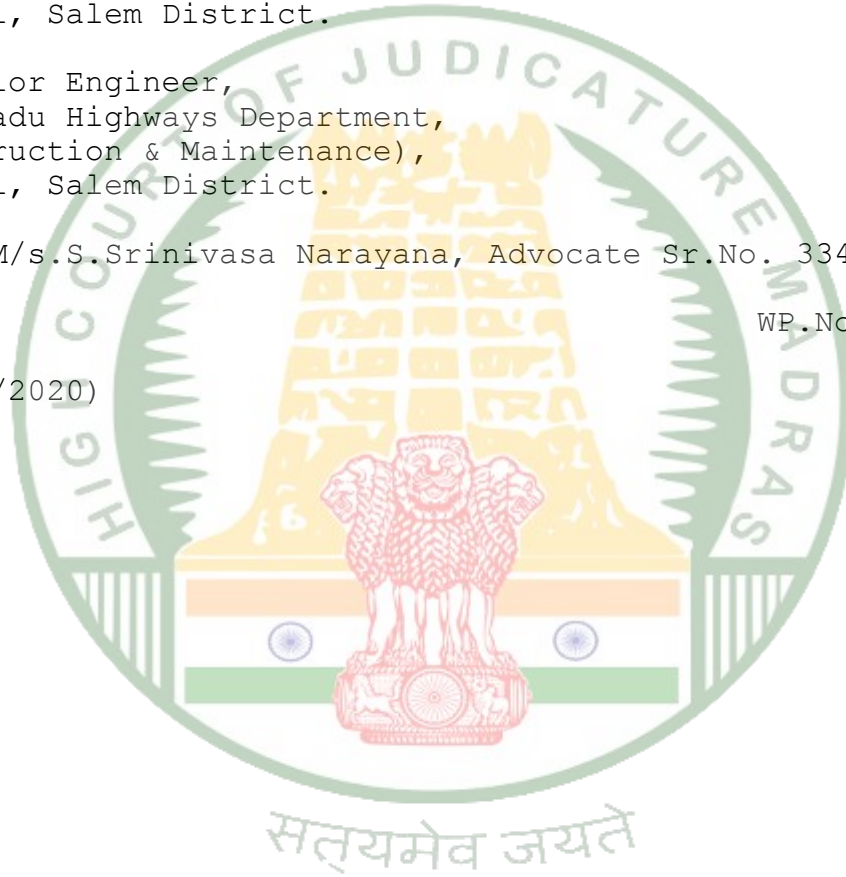
2.The Assistant Divisional Engineer,
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3.The Junior Engineer,
Tamilnadu Highways Department,
(Construction & Maintenance),
Edapadi, Salem District.

+1 cc to M/s.S.Srinivasa Narayana, Advocate Sr.No. 33442

WP.No.14121/2020

AJS (CO)
RMP (20/11/2020)



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