

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.10.2020

CORAM

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

WP.No.14417/2020 & WMP.No.17906/2020

1.M.Rayappan
2.P.Kathiresan
3.S.Mohanraj
4.R.Shanmugam

..Petitioners

Versus

1. The District Collector
Tiruppur, Tiruppur District.
2. The Divisional Engineer
State Highway, Tiruppur.
3. The Assistant Divisional Engineer
State Highway, Avinashi.
4. The Tahsildar
Tiruppur South Taluk
Tiruppur.

..Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records in Ku.No.Aakiramipur/2020/E.Va.A dated 22.09.2020 on the file of the 3rd respondent in SF.No.229/2 at Mangalam Village, Tiruppur South Taluk, Tiruppur District and quash the same.

For Petitioners : Mr.S.Vinoth Kumar
For RR 1 to 4 : Mr.R.Vijayakumar
Additional Government Pleader

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 to 4.

(3) The petitioners herein filed OS.No.189 of 2020 on the file of the Court of the District Munsif, Tiruppur, against the official respondents herein, praying for declaration that they had perfected the title in respect of the landed properties in SF.No.229/2 of Mangalam Village, Tiruppur South Taluk, Tiruppur District and for permanent injunction, restraining the defendants therein, their men, agents or servants from interfering with their peaceful possession and enjoyment and though the said suit has been entertained, no interim orders are in operation.

(4) The learned counsel for the petitioners would submit that though the lands in question is classified as 'cart track poramboke' as per the revenue records, the petitioners continue to be in possession and enjoyment of the same for more than 50 years and to declare their right, they also filed the said suit and all of a sudden, the 3rd has sent the impugned notice dated 22.09.2020 without even disclosing the provision of law under which the action has been taken to remove the encroachment and would further add that except by following due process of law, it is not open to the respondents to summarily evict the petitioners from the lands in question and prays for appropriate orders.

(5) Per contra, Mr. R. Vijayakumar, the learned Additional Government Pleader appearing on behalf of respondents 1 to 4 would submit that in the light of the admitted fact that the lands in question are classified as 'cart track poramboke', whatever period of possession claimed by the petitioners, cannot have any legal basis and he would further add that due process of law will be followed for evicting the petitioners.

(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, 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 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, taking into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioners either in the writ petition or in the suit as well as in the Legal Notice sent on their behalf dated 22.06.2020, permits the petitioners to submit individual representation/reply by enclosing relevant, necessary and authenticated documents 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 is directed to consider the said representations/replies of the petitioners, in the light of the proviso to Section 28[ii] of the Tamil Nadu State Highways Act, 2001 and pass appropriate orders within a further period of three weeks thereafter and till such time, the said official shall defer further decision in terms of the impugned notice dated 22.09.2020. It is also made clear that the petitioners, till the disposal of their representations by

the 3rd respondent, shall not create any third party rights in respect of the lands in question.

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

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

AP

To

1. The District Collector
Tiruppur, Tiruppur District.
2. The Divisional Engineer
State Highway, Tiruppur.
3. The Assistant Divisional Engineer
State Highway, Avinashi.
4. The Tahsildar
Tiruppur South Taluk
Tiruppur.

+1cc to Mr.S.Vinoth Kumar, Advocate, SR34343

WP.No.14417/2020

CO (MTI)
BDL/30/12/2020

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