

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.11.2020

CORAM

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

WP.No.15862 OF 2020

Sivaselva Deekshithar

.. Petitioner

Versus

1. The State of Tamil Nadu
rep.by its Secretary,
Highways and Minor Ports
Department, Fort St George
Chennai-9.

2. Assistant Divisional Engineer
[Buildings and Maintenance]
State Highways Department
Chidambaram, Cuddalore District.

.. Respondents

Prayer:-

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling upon the records of impugned order of the second respondent passed in Na.Ka.No.140/2020/Ka dated 06.10.2020 and quash the same.

For Petitioner : Mr.S.Mohamed Ismail
For RR 1 & 2 : Mr.M.Elumalai, AGP

ORDER

[Order of the Court was made by M.SATHYANARAYANAN]

(1)By consent, the writ petition is taken up for final disposal and is disposed of by the following order.

(2)Mr.M.Elumalai, learned Additional Government Pleader accepts notice on behalf of respondents 1 and 2.

(3)The petitioner claims to be an ardent devotee of ''Thandondri Vinayagar'' temple, which is located close to the road margin and also near a Pipal Tree.

(4)The learned counsel for the petitioner, on instructions,

would submit that the petitioner is also acting as an Archaga and incharge of the administration of the said temple and it is in existence for very many decades and to the shock and surprise of the petitioner, the 2nd respondent has issued the impugned Notice dated 06.10.2020 under Section 28[2] of the Tamil Nadu Highways Act, 2001 and prays for protection.

(5) Per contra, Mr.M.Elumalai, learned Additional Government Pleader appearing on behalf of respondents 1 and 2 has drawn the attention of this Court to the photographs at page No.4 of the typed set of documents as well as G.O.Ms.No.426, P&AR Department dated 13.12.1993 and the judgment of the Hon'ble Supreme Court of India reported in ---- [gujarat high court case] and would submit that admittedly, the temple is located very close to the road margin and as such, action is being taken in accordance with 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) As per the proviso to sub-section 2[iii] of Section 28 of the Tamil Nadu Highways Act, 2001, any representation received within the time limit, shall be considered by the authority or the officer concerned before passing final orders.

(9) This Court, in the light of the above facts and circumstances, permits the petitioner in his alleged capacity as the Archaga or Administrator of the temple to response to the impugned notice dated 06.10.2020 by enclosing relevant and authenticated documents within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the 2nd respondent is directed to consider and dispose of the said representation on merits and in accordance with law within a further period of two weeks thereafter and communicate the decision taken, to the petitioner and till such time, shall defer further proceedings/decision in terms of the impugned notice dated 06.10.2020. It is also made clear that till the disposal of the representation by the 2nd respondent, the physical features of the religious structure, shall not be altered by the petitioner.

(10) The writ petition stands disposed of accordingly. No costs.

Sd/-

सत्यमेव जयते Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Secretary,
State of Tamil Nadu,
Highways and Minor Ports
Department, Fort St George
Chennai-9.

2. Assistant Divisional Engineer
[Buildings and Maintenance]
State Highways Department
Chidambaram, Cuddalore District.

+1cc to the Government Pleader, S.R.No.36084

WP.No.15862 OF 2020

NR (CO)
CS/10/12/2020



WEB COPY