

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2020

CORAM :

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

W.P.No.16505 of 2020
and
W.M.P.No.20480 of 2020

K.Lokammal ... Petitioner

Vs.

- 1.The District Collector,
Vellore District,
Vellore.
- 2.The Revenue Divisional Officer,
Office of the Revenue Division,
Ranipet, Vellore District.
- 3.The Tahsildar,
Wallajah, Vellore District.
- 4.The Assistant Divisional Engineer (H) Office,
Construction and Maintenance, Wallajah,
Vellore - 632 513. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents not to dispossess the petitioner from No.420, Kamadhenu Nagar, Pandiya Nellore Post, Sholingur Taluk, Ranipet, Vellore District-631 102 except under due process of law.

For Petitioner : Mr.K.V.Sajeevkumar

For Respondents: Mr.M.Elumalai
Additional Government Pleader

O R D E R

(Order of the Court was made by M. SATHYANARAYANAN, J.)

The petitioner claims to be the owner of the superstructure bearing Door No.420, Kamadhenu Nagar, Pandiya Nellore Post, Sholingur Taluk, Ranipet District.

2.The learned counsel appearing for the petitioner would submit that, on an earlier occasion, one K.Prabakaran filed W.P.No.23233 of 2018 against the official respondents as well as against the Superintending Engineer, Electricity

Board, Vellore, praying for issuance of a writ of mandamus, directing the respondents to remove the encroachments in Survey Nos.125, 126, 128B1/1 in Pandiyanallur, adjacent to Thakkankulam, Sholingur, Walajah Taluk, Vellore District, to an extent of breadth of 132 feet road and also to disconnect the electricity service connection. The Division Bench of this Court disposed of the said writ petition on 06.09.2018 by directing the concerned official respondents to consider the representation and give a disposal in accordance with law. Accordingly, action was taken and aggrieved by the same, some of the encroachers also filed W.P.No.24177 of 2019 challenging the eviction notice and the Division Bench of this Court, vide order dated 22.01.2020, had directed them to submit their response to the impugned proceedings/notice, dated 31.07.2019, with further direction to the official respondents therein to give a disposal in accordance with law and also by adhering to the principles of natural justice.

3.The primordial submission made by the learned counsel appearing for the petitioner is that the 4th respondent, instead of issuing notice to the petitioner, has wrongly issued it to her son, who is no longer with her, and if an opportunity is given, she would be in a position to convince the 4th respondent as to the lawful possession of the premises in question, and prays for appropriate orders.

4.Mr.M.Elumalai, learned Additional Government Pleader, appearing on behalf of the respondents 1 to 4, would submit that, except enclosing two property tax receipts, dated 09.10.2000 and 30.07.2018, the petitioner did not produce any document as to show her right, title and possession in respect of the land in question, and by drawing the attention of this Court to the photographs at Page No.34 of the Typed Set of Papers, would submit that all the unauthorised constructions are located on the road margin, and the 4th respondent, by following due process of law, has rightly issued the impugned notice, and prays for dismissal of the writ petition.

5.This Court has carefully considered the rival submissions and also perused the materials placed before it.

6.It is relevant to extract Section 28 of the Tamil Nadu Highways Act, 2001 :

"28. (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."

7. This Court, taking into consideration the facts and circumstances of the case, without going into the merits of the claim as projected by the petitioner in the present writ petition, directs the petitioner to submit her response to the impugned notice, dated 28.09.2020, sent by the 4th respondent, by enclosing relevant and authenticated documents, within a period of three weeks from the date of receipt of a copy of this order. Upon receipt of the same, the 4th respondent is directed to consider the representation on merits and in accordance with law and pass further orders, within a further period of three weeks thereafter, and till such time, shall defer any further decision in terms of the impugned notice dated 28.09.2020. It is made clear that the petitioner, till the disposal of the representation by the 4th respondent, shall not alter the physical features of the superstructure and also shall not create any third party right in respect of the land and the superstructure in question.

This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Vellore District,
Vellore.

2.The Revenue Divisional Officer,
Office of the Revenue Division,
Ranipet, Vellore District.

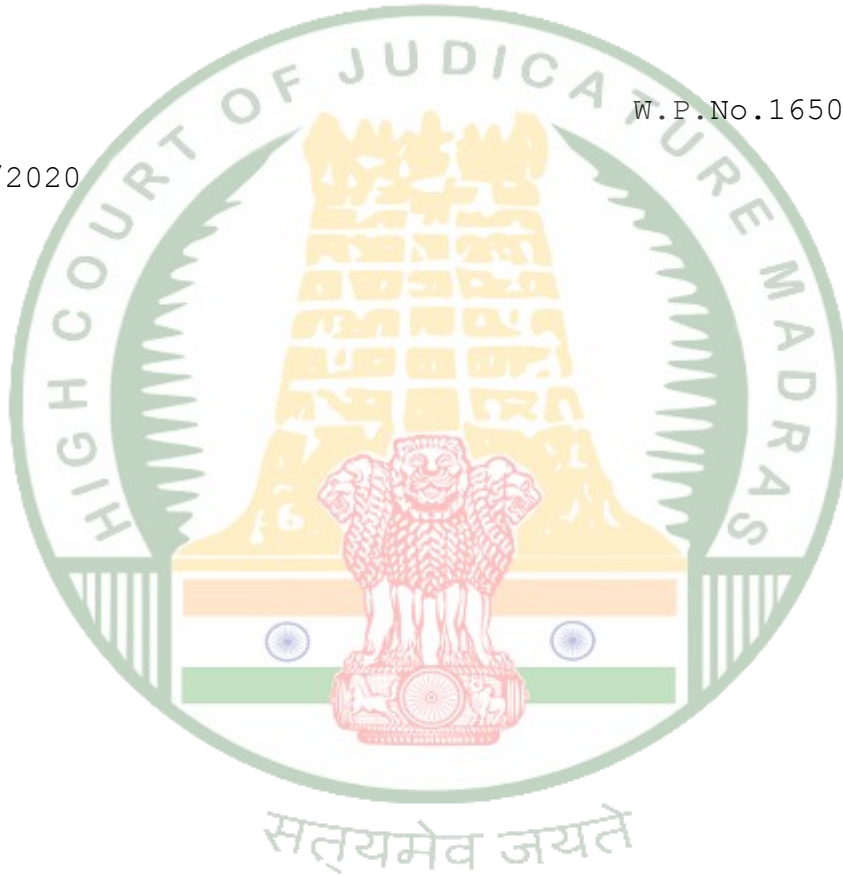
3.The Tahsildar,
Wallajah, Vellore District.

4.The Assistant Divisional Engineer (H) Office,
Construction and Maintenance, Wallajah,
Vellore - 632 513.

+1cc Mr.K.V.Sajeevkumar Advocate SR.NO.37985

MJB CO
SDR 14/12/2020

W.P.No.16505 of 2020



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