

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.11.2020

CORAM

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

WP.Nos.16006 & 16014/2020
& WMP.Nos.19919 & 19925/2020

A.Kannan .. Petitioner in
WP.No.16006/2020

A.Baskaran ... Petitioner
in WP.No.16016/2020

Versus

- 1.The District Collector
Collectorate Buildings
Sathuvacharry, Vellore District.
- 2.The Superintendent Engineer
Highways Department
Vellore District.
- 3.The Divisional Engineer
Highways Department
Vaniyambadi Division,
Tirupathur District.
- 4.The Assistant Divisional Engineer
Highways Department
Vaniyambadi Division, Tirupathur District.
- 5.The Assistant Engineer
Highways Department
Anaicut Division, Vellore District.

.. Respondents in both WPs

Prayer in WP.No.16006/2020:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records and quash the proceedings dated 21.10.2020 passed by the 4th respondent directing the petitioner to demolish and remove the alleged encroachments done in Survey No.180/1A/1A , Odugathur Village and Taluk, Vellore District and on failing which the 4th respondent will demolish and remove the said encroachments on 06.11.2020 or in any future dates.

Prayer in WP.;No.16014/2020:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records and quash the proceedings dated 21.10.2020 passed by the 4th respondent directing the petitioner to demolish and remove the alleged encroachments done in Survey No.180/1A/1A , Odugathur Village and Taluk, Vellore District and on failing which the 4th respondent will demolish and remove the said encroachments on 06.11.2020 or in any future dates.

For Petitioners in
both Writ Petitions : Mr.D.Thirumoorthy

For Respondents in
both Writ Petitions : Mr.M.Elumalai
Addl.Govt.Pleader

COMMON 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 this common order, since the issue to be decided is one and the same.
- (2)Mr.M.Elumalai, learned Additional Government Pleader accepts notice on behalf of the respondents.
- (3)The petitioner in WP.No.16006/2020 is a resident of Door No.45/14-A of Kuthandavar Koil Street, Odugathur Village and Taluk, Vellore Taluk and according to him, the property admeasuring to an extent of 108 sq.ft [12x9] in S.No.180/1A/1A has been assigned in his favour by the Office of the Tahsildar, Vellore, and thereafter, he put up a superstructure and for the purpose of eking out his livelihood, he is running the chicken stall in the name and style of ''Sankar Chicken Centre''.
- (4)The petitioner in WP.No.16014/2020 is a resident of Door No.63, Vanikar Street, Odugathur Village and Taluk, Vellore District and he claims to be the owner of the landed property admeasuring to an extent of 85 sq.ft of land and he is doing business dealing with sale of vessels in the name and style as ''Sriram Steel Centre''. It is also averred by him that he has been granted patta in Patta No.1197 in respect of the said land by the Zonal Deputy Tahsildar, Taluk Office, Vellore.

- (5) The Highways Department of Vellore District, on an earlier occasion, started interfering with the peaceful possession and enjoyment of the said land under the guise that the petitioners had encroached upon the Highways land and therefore, the petitioners along with Tvl.S.Mahalingam, S.Dhamodharan and J.Vijayan, had filed WP.No.28010 of 2013, praying for issuance of a writ of mandamus, to restrain the respondents therein from in any manner interfering with or demolishing the shops constructed by the petitioner and others in the said survey number and the said writ petition was entertained and interim order was passed. Thereafter, the writ petition came to be partly allowed vide order dated 30.01.2020 in and by which, the official respondents were directed to remove the encroachers, viz., petitioners 2 and 4, viz., the petitioners herein, in accordance with law and in respect of the others, viz., petitioners 1, 3 and 5 therein, the Court having found that they have been issued with valid pattas, restrained the respondents therein from demolishing their superstructures.
- (6) The learned counsel for the petitioners would submit that to the shock and surprise of the petitioners, the 4th respondent has issued the impugned Notice dated 21.10.2020 under Section 28[2][ii] of the Tamil Nadu Highways Act, 2001, and he would further add that in response to the same, the petitioners have submitted their individual Reply dated 31.10.2020 and without considering the same, the 4th respondent, without recourse to due process of law, went upon evicting the petitioners as well as demolishing the superstructures and hence, prays for appropriate orders.
- (7) Per contra, Mr.M.Elumalai, learned Additional Government Pleader appearing on behalf of respondents 1 to 5, has drawn the attention of this Court to paragraph No.5 of the order dated 30.01.2020 in WP.No.28010/2013 and would submit that in the light of the categorical finding rendered that the petitioners 2 and 4 therein, viz., the present writ petitioners, are encroachers, it is not open to them to take a contra stand and also drawn the attention of this Court to the impugned notice and would submit that since action is taken under Section 28[2][ii] of the Tamil Nadu Highways Act, 2001, the petitioners are not entitled to make any grievance and prays for dismissal of these writ petitions.
- (8) This Court has carefully considered the rival submissions and also perused the materials placed before it.
- (9) As rightly pointed out by the learned Additional Government Pleader appearing for the respondents, a Single Bench of this Court, in paragraph No.5 of the order dated 30.01.2020 in WP.No.28010/2013, had arrived at the categorical finding,

viz., petitioners 2 and 4 therein / petitioners herein [Mr.A.Kannan and Mr.A.Baskaran], are encroachers and therefore, granted liberty to the concerned official respondents to proceed against them in accordance with law. Accordingly, the 4th respondent has invoked the said provision and issued the impugned Notices for which the petitioners, have submitted their response dated 31.10.2020.

(10) It is relevant to extract Section 28[2][ii] 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 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.''

(11) In the light of the proviso to Section 28[2][ii], the 4th respondent is directed to consider the representations of the petitioners dated 31.10.2020 and give a disposal in accordance with law within a period of three weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioners herein and till such time, shall defer further decision in terms of the impugned Notice dated 21.10.2020. It is made clear that till the

disposal of the representations by the 4th respondent, the petitioners shall not create any third party rights in respect of the land as well as the superstructures in question.

(12)The writ petitions stand disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The District Collector
Collectorate Buildings
Sathuvacharry, Vellore District.
- 2.The Superintendent Engineer
Highways Department
Vellore District.
- 3.The Divisional Engineer
Highways Department
Vaniyambadi Division,
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+1cc to the Government Pleader SR.36488

KJ(CO)
CB(16/12/2020)

WP.Nos.16006 & 16014/2020