

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.Nos.16216, 16219, 16220 & 16222/2020 & WMP.Nos.20248,
20250, 20253, 20254, 20257, 20258, 20260 & 20262/2020

Subramaniam ... Petitioner in
WP.No.16216/2020

P.Chellammal ... Petitioner in
WP.No.16219/2020

S.Rajendran ... Petitioner in WP.No.16220/2020

R.Jegannathan ... Petitioner in
WP.No.16222/2020

Versus

1.The District Collector
Erode District, Erode.

2.The District Head Surveyor
Erode District.

3.The Executive Officer
Chennassamuthram Town Panchayat

Salaipudur, Erode District... Respondents in all WPs

Common Prayer in WP.Nos.16216 & 16219/2020:- Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 3rd respondent relating to the impugned order dated 15.10.2020 in his proceedings Na.Ka.No.233/2020 and quash the same and consequently, directing the 3rd respondent to survey the road in RS.No.355 as well as the petitioners' property in RS.No.367/3 with the help of the District Head Surveyor by identifying the survey stones with the help of FMB.

Prayer in WP.Nos.16220/2020:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 3rd respondent relating to the impugned order dated 15.10.2020 in his proceedings Na.Ka.No.233/2020 and quash the same and consequently, directing the 3rd respondent to survey the road

in RS.No.355 as well as the petitioners' property in RS.No.679/25 and 679/26 with the help of the District Head Surveyor by identifying the survey stones with the help of FMB.

Prayer in WP.No.16222/2020:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 3rd respondent relating to the impugned order dated 15.10.2020 in his proceedings Na.Ka.No.233/2020 and quash the same and consequently, directing the 3rd respondent to survey the road in RS.No.355 as well as the petitioners' property in RS.No.679/24 with the help of the District Head Surveyor by identifying the survey stones with the help of FMB.

For Petitioners in
all WPs : Mr.R.Kannan

For RR1 to 3 in
all WPs : Mr.V.Jayaprakash Narayan
Government Pleader

COMMON ORDER

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

- (1) By consent, the writ petitions are taken up for final disposal and is disposed of by this common order as the issue to be adjudicated, is one and the same.
- (2) Mr.V.Jayaprakash Narayan, learned Government Pleader accepts notice on behalf of respondents 1 to 3.
- (3) The petitioner in WP.No.16216/2020 claims that a portion of the land in Natham S.No.367/3 situate at Chennasamuthiram Village, Kodumudi Taluk, Erode District was allotted to him pursuant to the Decree for Partition in OS.No.157 of 1998 on the file of the Court of Subordinate Judge at Erode vide Judgment and Decree dated 28.04.1998 and in pursuant to the partition, the petitioner came into possession and had also put up a superstructure and he also claims that the statutory levies were also levied in respect of the said portion of the land and superstructure. The petitioner would further point out that on the Northern side of his property, there exists a road comprised in S.No.355 and on both sides of the road, the Local Body had put up a storm water drainage. A survey was done by the 3rd respondent in RS.No.355 on 20.08.2019 in terms of FMB and other revenue records and originally it was found that there was no encroachment on the part of the petitioner and that a superstructure has also been put up within his patta land. However, all of a sudden, the 3rd respondent, without issuing any prior notice to the petitioner, had once again surveyed the road in S.No.355 on 05.10.2020 and it was

followed by the impugned Notice on 15.10.2020 and challenging the legality of the same, the present writ petition in WP.No.16216 of 2020 came to be filed.

(4) The petitioner in WP.No.16219/2020 claims that a portion of the land in Natham S.No.367/3 situate at Chennasamuthiram Village, Kodumudi Taluk, Erode District was settled in favour of her pursuant to the Decree for Partition in OS.No.157 of 1998 on the file of the Court of Subordinate Judge at Erode vide Judgment and Decree dated 28.04.1998 through a registered Settlement Deed dated 30.03.2009 and in pursuant to the settlement, the petitioner came into possession and had also put up a superstructure and she also claims that the statutory levies were also levied in respect of the said portion of the land and superstructure. The petitioner would further point out that on the Northern side of her property, there exists a road comprised in S.No.355 and on both sides of the road, the Local Body had put up a storm water drainage. A survey was done by the 3rd respondent in RS.No.355 on 20.08.2019 in terms of FMB and other revenue records and originally it was found that there was no encroachment on the part of the petitioner and that a superstructure has also been put up within her patta land. However, all of a sudden, the 3rd respondent, without issuing any prior notice to the petitioner, had once again surveyed the road in S.No.355 on 05.10.2020 and it was followed by the impugned Notice on 15.10.2020 and challenging the legality of the same, the present writ petition in WP.No.16216 of 2020 came to be filed.

(5) The petitioner in WP.No.16220/2020 claims that he purchased a portion of the land in Natham S.Nos.679/25 and 679/26 situate at Chennasamuthiram Village, Kodumudi Taluk, Erode District, through a registered Sale Deed dated 14.09.2018 and pursuant to the said purchase, the petitioner had also put up a superstructure and he also claims that the statutory levies were also levied in respect of the said portion of the land and superstructure. The petitioner would further point out that on the Northern side of his property, there exists a road comprised in S.No.355 and on both sides of the road, the Local Body had put up a storm water drainage. A survey was done by the 3rd respondent in RS.No.355 on 20.08.2019 in terms of FMB and other revenue records and originally it was found that there was no encroachment on the part of the petitioner and that a superstructure has also been put up within his patta land. However, all of a sudden, the 3rd respondent, without issuing any prior notice to the petitioner, had once again surveyed the road in S.No.355 on 05.10.2020 and it was followed by the impugned Notice on 15.10.2020 and challenging the legality of the same, the present writ petition in WP.No.16216 of 2020 came to be filed.

(6) The petitioner in WP.No.16222/2020 claims that a portion of the land in Natham S.Nos.679/24 situate at Chennasamuthiram Village, Kodumudi Taluk, Erode District was allotted to him pursuant to a registered Partition Deed dated 03.02.2014 and in pursuant to the partition, the petitioner came into possession and had also put up a superstructure and he also claims that the statutory levies were also levied in respect of the said portion of the land and superstructure. The petitioner would further point out that on the Northern side of his property, there exists a road comprised in S.No.355 and on both sides of the road, the Local Body had put up a storm water drainage. A survey was done by the 3rd respondent in RS.No.355 on 20.08.2019 in terms of FMB and other revenue records and originally it was found that there was no encroachment on the part of the petitioner and that a superstructure has also been put up within his patta land. However, all of a sudden, the 3rd respondent, without issuing any prior notice to the petitioner, had once again surveyed the road in S.No.355 on 05.10.2020 and it was followed by the impugned Notice on 15.10.2020 and challenging the legality of the same, the present writ petition in WP.No.16216 of 2020 came to be filed.

(7) Mr.R.Kannan, learned counsel for the petitioners would submit that in the light of the survey done on 20.08.2019 by the 3rd respondent and having found that the lands of the petitioners as well as the superstructures put up by them lie well within their properties, there was no need or necessity for re-survey and it has been done on 05.10.2020 without any notice and in the event of the District Surveyor does that exercise once again in the presence of the petitioners after putting them on notice, it will be revealed that there are no encroachments on the part of the petitioners upon the public road and individual objections/representations dated 21.10.2020 were also submitted by the petitioners and it may be directed to be considered and appropriate orders to be passed and till such time, prays for deferment of the proceedings.

(8) Per contra, Mr.V.Jayaprakash Narayan, learned Government Pleader appearing for respondents 1 to 3 in all the writ petitions, on instructions would submit that even the re-survey was also done in the presence of the petitioners only and since the writ petition in WP.No.12509 of 2020 has been entertained, action has been taken strictly in accordance with law and therefore, the petitioners cannot express any grievance and prays for dismissal of these writ petitions.

(9) This Court has considered the rival submissions and also perused the materials placed before this Court.

(10) It is relevant to extract Section 182 of the Tamil Nadu District Municipalities Act, 1920:-

182-Removal of encroachments:-
<https://hcservices.ecourts.gov.in/hcservices/>

(1)The executive authority, may, by notice, require the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction [other than a door, gate, bar or ground floor window] situated against or in front of such premises and in or over any street.

(2)If the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto or that it was erected or made with the permission or licence of any municipal authority duly empowered in that behalf, and that the period, if any, for which the permission or licence is valid has not expired, the municipal council shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same.''

(11)Though the petitioners pray for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by them either in these writ petitions or in their representations/objections, directs the 3rd respondent to consider and dispose of the said representations/objections dated 21.10.2020 submitted by the petitioners 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 communicate the decision taken, to the petitioners and till such time, shall defer further proceedings in terms of the impugned Notices dated 15.10.2020.

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

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

AP

To

1.The District Collector
Erode District, Erode.

2.The District Head Surveyor
Erode District.

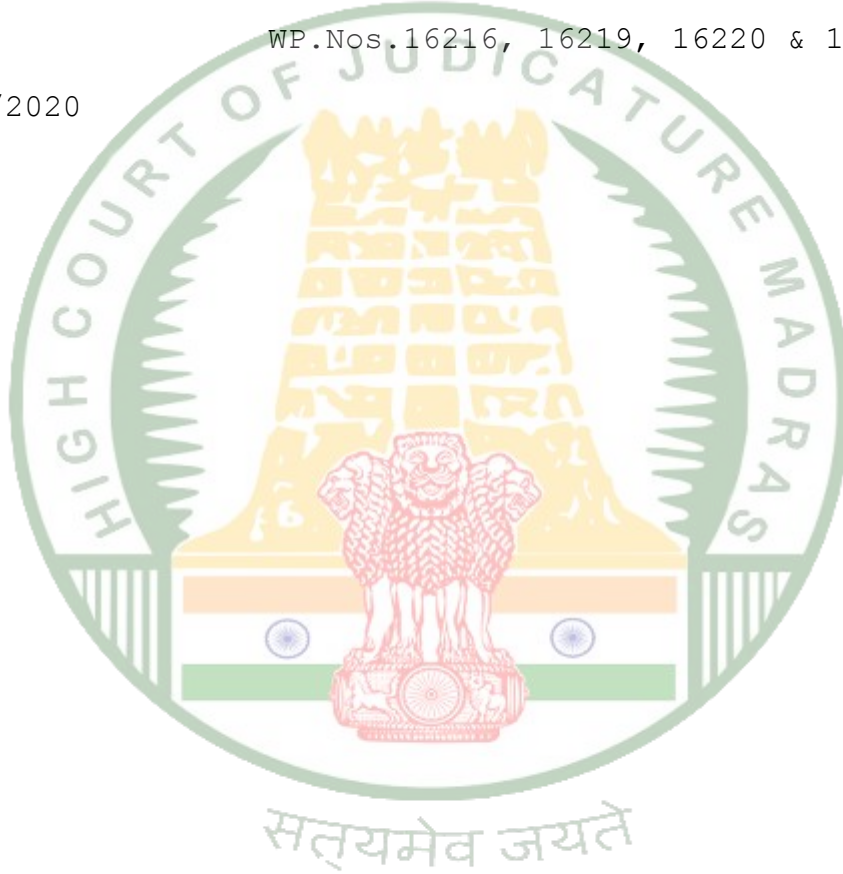
3.The Executive Officer
Chennassamuthram Town Panchayat
Salaipudur, Erode District.

+one CC to Mr.R.Kannan Advocate SR.NO.37527

+one CC to Mr.V.Jayaprakash Narayanan Advocate SR.NO.37135

WP.Nos.16216, 16219, 16220 & 16222/2020

EV CO
SDR 11/12/2020



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