

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 11.12.2020
CORAM
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA
WP.No.18547/2020 & WMP.Nos.22990, 22992 & 22995/2020

Jaganathan

.. Petitioner

Versus

- 1.The Divisional Engineer [H]
Krishnagiri State Highways Department
Krishnagiri Range, Krishnagiri Town
and District.
- 2.The Assistant Divisional Engineer [H],
Hosur Sub Division, State Highways
Department, Hosur, Krishnagiri District. .. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records in Na.Ka.No.45/A1/2020 dated 11.11.2020 on the file of the 2nd respondent and quash the same and further direct the 2nd respondent to not to disturb the peaceful possession of the land in S.No.195, Amman Nagar, ITI, Denkanikottai Main Road, HCF Post, Hosur.

For Petitioner : Mr.S.C.Viswanth
For R1& R2 : Ms.R.J.Radhika
Government Advocate

ORDER

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

- (1)By consent, the writ petition is taken up for final disposal and is disposed of by this order.
- (2)Ms.R.J.Radhika, learned Government Advocate accepts notice on behalf of respndents 1 and 2.
- (3)The petitioner claims to be a Poojari of an ancient temple, viz., Kottaimariyamman Temple and he came forward to file this

writ petition, challenging the impugned notice dated 11.11.2020 issued by the 2nd respondent.

(4) In the impugned notice, it is stated among other things that the petitioner has caused encroachment on the right side of the road, viz., Hosur-Denkanikottai Road at Km 3/8. The petitioner, in response to the said notice, has submitted his representation dated 12.11.2020 and his grievance is that despite receipt and acknowledgment, the 2nd respondent is proceeding further and therefore, the petitioner is constrained to approach this Court, by filing this writ petition.

(5) The learned Government Advocate appearing for the respondents would submit that in the absence of acknowledgment and that apart, there is no instructions as to the receipt of the such representation and the prayer sought for by the petitioner cannot be granted and prays for dismissal of this writ petition.

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

(1) It is relevant to extract Section 28 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.'

(7) Though the petitioner has prayed 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 the petitioner either in his representation or in this writ petition, permits the petitioner to submit a detailed representation by enclosing relevant and authenticated documents to the 2nd respondent within a period of three weeks from the date of receipt of a copy of this order / uploading of the order in the website and the 2nd respondent, on receipt of the same, is directed to consider and dispose of the said representation in the light of the proviso to sub-section [2] of Section 28 of the Tamil Nadu Highways Act, within a further period of six weeks thereafter and communicate the decision taken, to the petitioner and till such time, shall defer further proceedings in terms of the impugned notice dated 11.11.2020. It is also made clear that the petitioner, till the disposal of the representation, shall not alter the physical features of the structure/temple and shall also not create any third party rights in respect of the land and superstructure/temple in question.

(8) The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

सत्यमेव जयते -s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

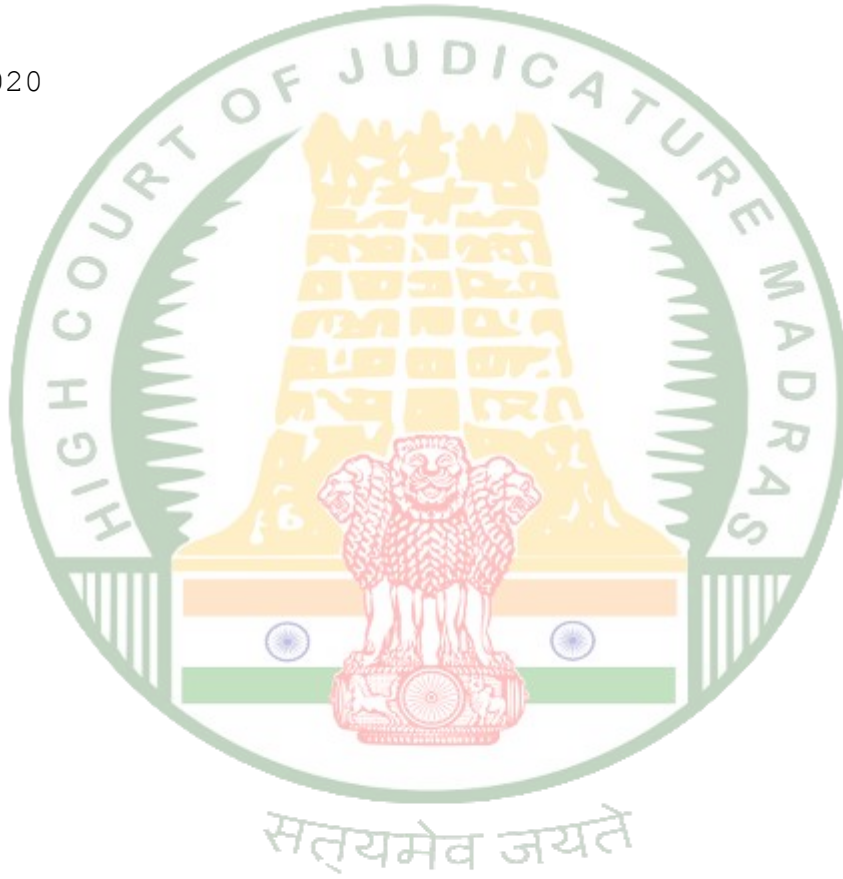
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Department, Hosur, Krishnagiri District.

+1 cc to Mr.S.C.Viswanth Advocate sr40757
+1 cc to the Government Pleader sr40711

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