

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.12.2020

CORAM

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

WP.No.18127/2020 & WMP.No.22518/2020

Tmt.Kavitha

..Petitioner

Versus

- 1.Assistant Divisional Engineer [Highways]
C&M, Tamil Nadu State Highways Department
Mettur, Salem District.
- 2.Junior Engineer [Highways], C&M,
Tamil Nadu State Highways Department
Mettur, Salem District.
- 3.The Tahsildar
Mettur Taluk, Mettur Dam,
Salem District.
- 4.The Taluk Surveyor,
Kolathur, Mettur Taluk
Salem District.

..Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating to the eviction notice dated 15.10.2020 issued by the 2nd respondent, quash the same to the extent of the petitioner occupation the land in S.No.545/1&2 to the extent of 2 ½. Cents at Singiripatti Village, Mettur Taluk, Salem District without following the procedure in accordance with law.

For Petitioner : Mr.S.Doraiswamy

For RR 1 to 4 : Ms.R.J.Radhika
Government Advocate

ORDER

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

- (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 Additional Government Pleader accepts notice on behalf of the respondents 1 to 4.
- (3) The petitioner is in occupation of 1./2 cent of land with a temporary superstructure in S.No.545/1 and is also running a Hollow Brick manufacturing Unit on the land situate in S.Nos.545/1 & 2 at Mettur - Palar Road.
- (4) The 2nd respondent has issued Notice dated 15.10.2020 calling upon the petitioner to remove the objectionable encroachment within seven days from the date of receipt of the copy of the said notice, failing which further action would be taken and also communicated a copy of the said notice to the 1st respondent and challenging the legality of the same, the present writ petition is filed.
- (5) The learned counsel for the petitioner has drawn the attention of this Court to the communication of the Surveyor dated 20.02.2017 and would submit that since the land in question has been classified as 'Government Poramboke', respondents 1 and 2 totally lack jurisdiction to evict him and prays for appropriate orders.
- (6) Per contra, Ms.R.J.Radhika, learned Government Advocate appearing for the respondents 1 and 2 would submit that admittedly, the petitioner is a rank encroacher in respect of 2 ½ cents of land in S.No.545/1 and 2 and apart from putting up temporary superstructure, is also running a commercial division in the form of Hollow Bricks manufacturing Plant and since action is taken in accordance with law, the present writ petition is per se maintainable and prays for dismissal of this writ petition.
- (7) This Court has considered the rival submissions and also perused the materials placed before it.
- (8) 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.'

सत्यमेव जयते

(9)The petitioner, in the light of proviso to section 28 [2][ii] of the Tamil Nadu Highways Act, 2001, the petitioner is at liberty to submit a detailed representation by enclosing relevant and authenticated documents to the 2nd respondent 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 the said representation on merits and in accordance with law and also in the light of the above cited provision and pass appropriate orders within a further period of three weeks thereafter and communicate the decision taken to the petitioner and till such time, shall defer further decision in terms of the impugned notice dated 15.10.2020. It is also

made clear that the petitioner, till the disposal of the representation by the 2nd respondent, shall not create any third party rights in respect of the land and superstructure in question.

(10)The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

AP

To

- 1.Assistant Divisional Engineer [Highways]
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Mettur, Salem District.
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Tamil Nadu State Highways Department
Mettur, Salem District.
- 3.The Tahsildar
Mettur Taluk, Mettur Dam,
Salem District.
- 4.The Taluk Surveyor,
Kolathur, Mettur Taluk
Salem District.

+1cc to Mr.S.Doraisamy, Advocate, S.R.No.39382
+1cc to Special Government Pleader, SR.NO.39552

WP.No.18127/2020

PVS (CO)
KKV/31/12/2020

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