

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

WP.No.19781 of 2020 and
WMP.No.24446 of 2020

E.Mari

... Petitioner

Versus

1.The Principal Secretary to Government,
Highways and Minor Ports Department,
St.Fort George, Secretariat,
Chennai – 600 009

2.The District Collector,
Tiruvallur District,
Tiruvallur

3.Project Director,
Tamil Nadu Road Sector Project,
No.17, Kesava Perumalpuram,

Greenway road, Raja Annamalaipuram,
Chennai – 600 028

4. Director General,
Highway Department,
Integrated Chief Engineers Office,
No.76, Sardhar Patel Road,
Chennai – 600 025

5. Chief Engineer,
Construction and Maintenance,
No.76, Sardhar Patel Road,
Guindy, Chennai – 600 025

6. The Divisional Engineer,
Highways, Construction & Maintenance,
Tiruvallur Division,
Tiruvallur

7. G. Mohan

Respondents

Prayer:- Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus directing the respondents to take suitable and appropriate action on the representation submitted by the petitioner on 31.10.2020.

For Petitioner : Mr.V.Ramamurthy
For Respondents
For R1 to R6 : Mr.R.Vijayakumar,
Additional Government Pleader

ORDER

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

Mr.V.Ramamurthy, learned counsel appearing for the petitioner has drawn the attention of this Court to the communication of the Assistant Engineer, Highways (Construction and Maintenance), Gummudipoondi, in letter no.12/2020/உ.பொ/ஆக்கிரமிப்பு, dated 02.11.2020, addressed to the office of the Government Pleader and would submit that having noted encroachments on the part of Tmt.Ettiyammal, wife of Govinda Reddy and Tmt.Muniammal, wife of Balakrishnan as well as on the part of the 7th respondent, has initiated action by invoking Section 28(2) of the Tamil Nadu Highways Act and aggrieved by the same, some of the encroachers namely, Tmt.Ettiyammal and Tmt.Muniammal, had also filed a Suit in O.S.No.16/2020, on the file of the Court of District Munsif, Uthukkottai, for permanent injunction and the same is pending and also took out an

application for ad-interim injunction in I.A.No.59/2020 and the same is pending. It is also the submission of the learned counsel appearing for the petitioner that in the light of the specific bar under Section 63 of the Highways Act, the Suit itself is not maintainable and prays for appropriate order for removal of encroachment, caused by the encroachers, including the 7th respondent.

2. Mr.R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the respondents 1 to 6 and would submit that the counter affidavit has been filed in I.A.No.59/2020 and though specific stand has been taken as to the maintainability of the said Suit, in the light of Section 63 of the Highways Act, 2001, further proceedings would take place in accordance with law to remove the encroachments caused by the plaintiff in O.S.No.16 of 2020 as well as 7th respondent.

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

4. It is relevant to extract Section 63 of the Tamil Nadu Highways Act, 2001:

"63. Bar of Certain Proceedings: (1) No suit or other legal proceedings shall lie against the Government of anything which is in good faith done or intended to be done by or under this Act.

(2) (a) No suit, prosecution or other proceedings shall lie against the State Highways Authority or any Highways authority, or officer or person for any thing done or intended to be done under this Act, without the previous sanction of the Government, and such suit, prosecution or proceeding shall be filed within thirty days from the date of the act complained of.

(b) No such authority or officer or person shall be liable in respect of any such Act in any civil or criminal proceedings, if the Act was done in good faith in the course of the execution of the duties or the discharge of the functions assigned to such authority or officer or person by or under this Act. "

5. Some of the alleged encroachers, namely, Tmt.Ettiymmal and Tmt.Muniammal, had filed the Suit in O.S.No.16/2020, on the file of the District Munsif, Uthukottai, against the respondents 2, 6 and the Thasildar, Uthukottai and the Assistant Engineer (Highways), Construction and Maintenance, Gummudipoondi, for permanent injunction restraining the

defendants from interfering with their peaceful possession and enjoyment of the land comprised in S.F.No.150, situate at Aathupakkam Village, Uthukottai Taluk, Thiruvallur District and pending disposal of the said Suit, also took out the Interlocutory Application in I.A.No.59/2020 for ad-interim injunction and the 4th respondent/defendant has also filed a counter affidavit, taking the stand as to the maintenance of the Suit.

6. In the considered opinion of this Court, in the light of Specific Bar under Section 63 of the Highways Act, the Suit appears prima facie to be not maintainable.

7. The official respondent concerned has also invoked some provisions of Section 28(2) of the Tamil Nadu Highways Act and jurisdictional Official, namely, Assistant Engineer (Highways), Construction and Maintenance, Gummidipoondi, had also taken action by invoking Section 28(2)(ii) of the Highways Act and he shall continue the said exercise in accordance with law, by adhering to the principles of natural justice and complete the same within a period of eight weeks from

the date of receipt of a copy of this order and communicate the decision taken, to the petitioner as well as to the encroachers, including the 7th respondent.

8. The Writ Petition stands disposed of. No costs. Consequently connected miscellaneous petition is closed.

[M.S.N.,J] [R.H., J]
23.12.2020

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Internet : Yes/No
Index : Yes/No

To
1.The Principal Secretary to Government,
Highways and Minor Ports Department,
St.Fort George, Secretariat,
Chennai – 600 009.

2.The District Collector,
Tiruvallur District, Tiruvallur.

3.Project Director,
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M.SATHYANARAYANAN, J.,

AND

R.HEMALATHA.,J

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Tiruvallur

Copy to:

The Court of District Munsif,
Uthukottai, Tiruvallur District.

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