

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 18.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

WP.No.19262/2020 & WMP.Nos.23849 & 23851/2020
[Video Conferencing]

M.Kalaiselvan

.. Petitioner

Versus

1.The Government Principal Secretary
Department of Revenue & Disaster
Management, Government Secretariat
Chennai 600 009.

2.The District Collector
Collectorate, Salem District.

3.The Chief Engineer
Highway Department
Guindy, Chennai 600 025.

4.The Tahsildar
Mettur, Mettur Taluk
Salem District.

5.The Executive Officer
Selection Grade Town Panchayat
Mecheri, Mettur Taluk
Salem District.

6.The Divisional Engineer
Highway Department,
Construction and Maintenance
Edappadi, Salem District.

7.The Assistant Divisional Engineer
Highway Department
Construction and Maintenance
Omalar, Salem District.

8.K.Chinnasamy

9.G.Vijayakumar

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari mandamus directing the certiorari calling for the records of the impugned eviction notice issued under section 28[2][ii] of Tamil Nadu Highways Department Act, 2001 dated 19.11.2020 on the file of the 7th respondent and quash the same.

For Petitioner : Mr.T.C.Gopalakrishnan
For RR 1 to 7 : Mr.V.Jayaprakash Narayan
Government Pleader

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) Mr.V.Jayaprakash Narayan, learned Government Pleader accepts notice on behalf of respondents 1 to 7.

(3) One K.Chinnasamy, on an earlier occasion, filed WP.No.16720/2019 against the Highways Department as well as against Tvl.Kamalakaran, Kalaivanan and Vaamalai, praying for issuance of a writ of mandamus, directing the respondents 1 to 7 therein to remove the shops 8 to 10 put up by the private respondents in the form of encroachment upon Salem - Mettur and Mettur - Salem Highway at about 1 Km near Badrakaliamman Temple at Mecheri, Salem District, by considering the representation dated 08.01.2019 and the said writ petition came to be disposed of with certain directions and it is relevant to extract the same:

'11.A perusal of the averments made in the plaint in OS.No.313 of 2019, would disclose that the plaintiffs claim that they are in possession of the suit property admeasuring 1.12 acres and 0.56 acres of land in S.No.247/1, new S.No.247/1A Village natham, Salem Village for over 150 years. The plaintiffs therein also enclosed 15 documents to probablise their claim that their forefathers, by way of succession and possession are in enjoyment over the suit property for 150 years, but the earliest document is of the year 2011 only.

12.Since the 8th respondent along with six others filed a comprehensive suit for declaration of title in respect of the property in question, if they are so advised, they are at liberty to work out their remedy before the said forum and pendency of the suit, in the absence of interim order, is nt a bar on the part of the official respondents, to proceed against the encroachments in respect of the land in question, in accordance with law and the said exercise is to be completed within a period of twelve weeks from the date of receipt of a copy of this order , by adhering to the principles of natural justice and the decision taken in this regard, shall be communicated to the persons

concerned.

13.The writ petition is disposed of accordingly. No costs. Registry shall communicate the order to the Court of Principal District Munsif, Mettu, Salem, as well as Sub Judge, Mettur.''

- (4)The petitioner is one of the plaintiffs in OS.No.313 of 2019 on the file of the Court of Subordinate Judge, Mettur, and the said suit is filed against one Vijayakumar and 17 others which include defendants, viz., the Collector of Salem District, RDO,--- DRO, Mecheri Village, came forward to file this writ petition by submitting that the lands referred to in the impugned notice is classified as Grama Natham [village Site] and as such, the respondents 6 and 7 cannot invoke Section 28[ii] of the Tamil Nadu Highways Act, 2001 and prays for appropriate orders.
- (5)The learned counsel for the petitioner in response to the notice, a reply in the form of Legal Notice dated 23.11.2020 has been sent on behalf of the father of the petitioner and till such disposal, prays for appropriate orders.
- (6)The Court heard the submissions of Mr.V.Jayaprakash Narayan, learned Government Pleader appearing for respondents 1 to 7.
- (7)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.''

(8) 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 the reply in the form of Legal notice dated 23.11.2020 sent by the father of the petitioner or in this writ petition, directs the 7th respondent to consider and dispose of the reply/legal notice dated 23.11.2020 in the light of the proviso to Section 28 of the Highways Act 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 communicate the decision taken, to the petitioner as well as to his father, viz., Thiru K.Madhaiyan and till such disposal, shall defer further decision in terms of the impugned notice. It is made clear that till the consideration and disposal of the reply/legal notice dated 23.11.2020 by the 7th respondent, the petitioner shall not create any third party rights in respect of the land and superstructure in question.

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

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

AP
To

1.The Government Principal Secretary
Department of Revenue & Disaster
Management, Government Secretariat
Chennai 600 009.

2.The District Collector
Collectorate, Salem District.

3.The Chief Engineer
Highway Department
Guindy, Chennai 600 025.

4.The Tahsildar
Mettur, Mettur Taluk
Salem District.

5.The Executive Officer
Selection Grade Town Panchayat
Mecheri, Mettur Taluk
Salem District.

6.The Divisional Engineer
Highway Department,
Construction and Maintenance
Edappadi, Salem District.

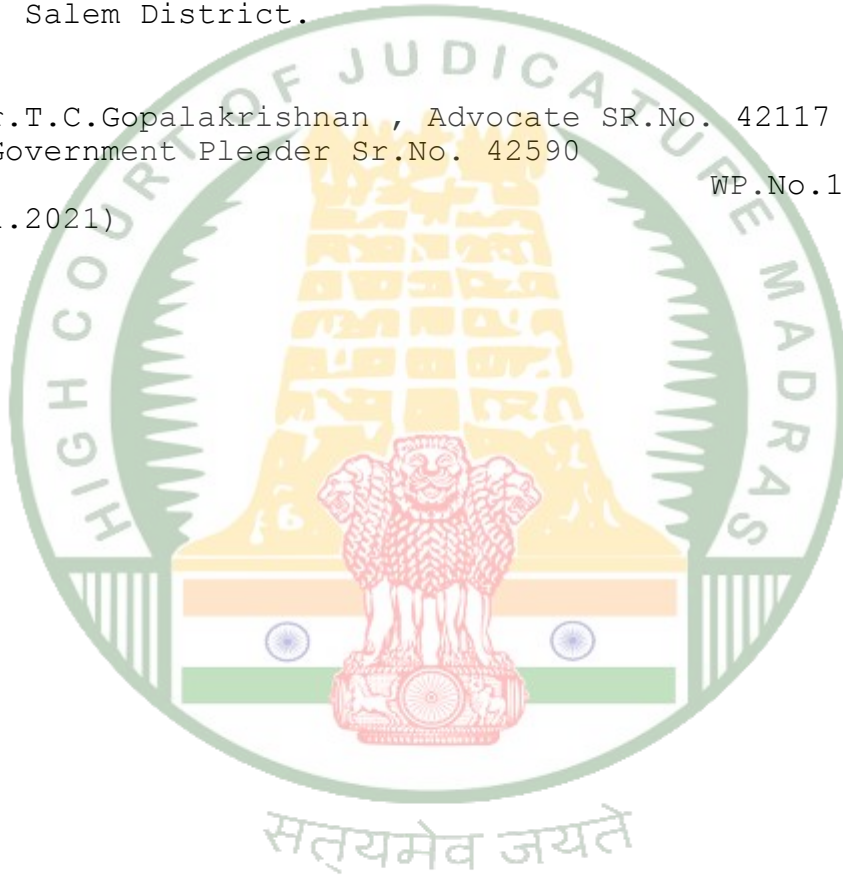
7.The Assistant Divisional Engineer
Highway Department
Construction and Maintenance
Omalur, Salem District.

+1cc to Mr.T.C.Gopalakrishnan , Advocate SR.No. 42117

+1 cc to Government Pleader Sr.No. 42590

WP.No.19262/2020

A.SK(18.01.2021)



WEB COPY