

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 08.01.2021
CORAM
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN
WP.No.425/2021 & WMP.No.506/2021

[Video Conferencing]

R.Moorthy .. Petitioner

Versus

1.The Assistant Divisional Engineer
Highways Department
Kodumudi, Erode District.

2.The Assistant Engineer
Highways Department
Kodumudi, Erode District.

3.The Tahsildar
Office of the Tahsildar
Modakurichi Taluk
Erode District.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus forbearing the respondents 1 and 2 from demolishing the petitioner's building comprised in RS.No.1151/1A, Old Survey No.378 situated at Modakurichi Taluk, Arachalur 'E' Village, Erode District to an extent of 6 cents till the survey process is completed by the 3rd respondent.

For Petitioner : Mr.A.Gokulakrishnan

For RR 1 & 2 : Mr.M.Loganathan
Additional Government Pleader

For R3 : Mr.R.Vijayakumar
Additional 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.M.Loganathan, learned Additional Government Pleader accepts notice on behalf of respondents 1 and 2 and Mr.R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the 3rd respondent.

(3)The petitioner claims to be the owner of the landed property at Arachalur Village, Erode Taluk and District in S.No.378 [R.S.No.1151/1A] admeasuring to an extent of 0.06

cents and it was originally purchased by his father vide registered Sale Deed bearing Doc.No.362/1969 registered on the file of the Sub Registrar at Sivagiri. The petitioner would further aver that during the lifetime of his father, a superstructure consisting of a residential portion and five shops have been constructed and the father of the petitioner died in the year 2018.

(4) The learned counsel for the petitioner would submit that on 22.11.2020, while causing inspection of the road, the officials of the Highways Department has informed the petitioner as to the encroachment and according to the petitioner, the alleged survey has been done without any notice to the petitioner. The petitioner has also done the said exercise through a private surveyor, who informed the petitioner that there was no encroachment on the part of the petitioner upon the road margin. It is the further submission of the learned counsel that to the shock and surprise of the petitioner, he was issued with a notice dated 14.12.2020 by the 2nd respondent for removal of the encroachment and it is followed by yet another communication dated 15.12.2020, calling upon him to re-survey within a period of seven days in the event of some discrepancy and to remove the encroachment, failing which, action will be taken to remove the same.

(5) The learned counsel for the petitioner would submit that immediately the petitioner has also submitted an application dated 18.12.2020 for surveying the land in RS.No.1151/1A and also informed the 2nd respondent vide representation dated 18.12.2020 as to the said fact. The petitioner has also submitted a detailed representation dated 19.12.2020 as to the factual aspect and prayed for outer time limit of 25 days for the purpose of surveying the lands, failing which, he is likely to suffer financial hardship and other difficulties.

(6) The primordial submission made by the learned counsel for the petitioner is that in the light of the fact that the application dated 18.12.2020 as been submitted to the 3rd respondent for causing survey in Arachalur 'E' Village RS.No.1151/1A, respondents 1 and 2 may defer further proceedings as to the removal of the alleged encroachment and prays for appropriate orders.

(7) Per contra, Mr.M.Loganathan, learned Additional Government Pleader appearing for respondents 1 and 2 /Highways Department would submit that a thorough survey was done and the result of the survey had disclosed the fact that the petitioner had encroached upon the road margin and since action is taken in terms of the provisions of the Highways Act, 2001, the petitioner cannot express any grievance and prays for dismissal of this writ petition.

(8) Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the 3rd respondent would submit that the 2nd respondent has sent communication dated 08.01.2021 [today] to the office of the Government Pleader, High Court, Madras,

and in the light of the application for survey, further action has been deferred.

- (9) This Court has considered the rival submissions and also perused the materials placed before it.
- (10) 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, directs the 3rd respondent to entertain the revision/application dated 18.12.2020 for re-survey, if the papers are otherwise in order and with the aid of the jurisdictional Surveyor, re-survey the land in RS.No.1151/1A within a period of two weeks from the date of receipt of a copy of this order / uploading of the order in the website after putting on notice, the petitioner or his authorised representative and depending upon the result of the inspection, it is open to the respondents 1 and 2, to proceed further in accordance with law.
- (11) It is also to be noted at this juncture that the petitioner, neither in his representation nor in this writ petition, had specifically stated as to the construction of a house and shops in accordance with the Planning Permission or not and it is open to the jurisdictional Local Body to cause inspection of the superstructure and if the result of the inspection reveals that the said superstructure, housing house and five shops, came into being without Planning Permission / deviation of the Planning Permission, shall take immediate, necessary and appropriate action in accordance with law.
- (12) The 2nd respondent, till the disposal of the application for resurvey by the 3rd respondent, shall defer further decision, in terms of the notice/communication dated 15.12.2020.
- (13) The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

सत्यमेव जयते Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

AP
To

1.The Assistant Divisional Engineer
Highways Department
Kodumudi, Erode District.

2.The Assistant Engineer
Highways Department
Kodumudi, Erode District.

3.The Tahsildar
Office of the Tahsildar
Modakurichi Taluk
Erode District.

COPY TO:-

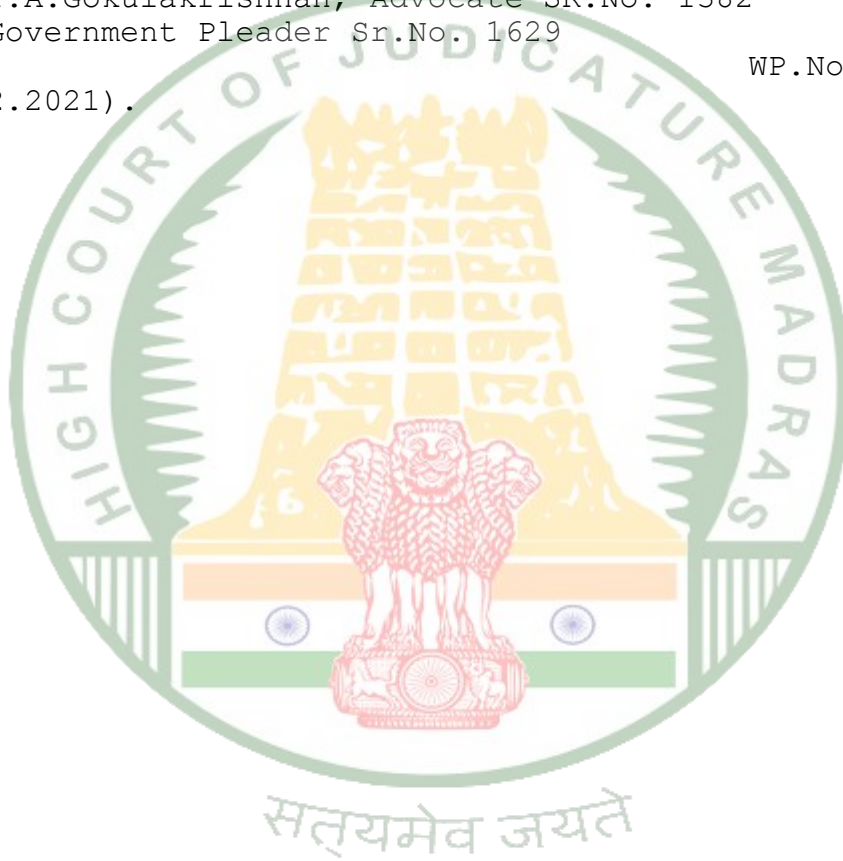
The Block Development Officer
Modakurichi Panchayat Union,
Erode District.

+1cc to Mr.A.Gokulakrishnan, Advocate SR.No. 1382

+1 cc to Government Pleader Sr.No. 1629

WP.No.425/2021

A.SK(05.02.2021).



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