

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.01.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.822 of 2021
and
W.M.P.No.885 of 2021

M.Mohammed Hussain ... Petitioner

Versus

The Assistant Divisional Engineer (Highway) C(and)M,
Ambattur Sub Divisional,
Avadi, Thiruvallur District. ... Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records pertaining to the impugned notice purportedly issued vide Ku.No.185/2020/C2/ dated 28.12.2020 under Section 28 (2) (ii) of TN Highways Act 2001 by respondent as without jurisdiction, illegal and to quash the same and to pass such further or other orders.

For Petitioner : Mr.G.Mohanakrishnan

For Respondent : Mr.R.Vijayakumar
Additional Government Pleader

ORDER

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

Heard the submission of the learned counsel appearing for the petitioner and Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the sole official respondent and also perused the counter affidavit dated 17.01.2021. The Sub-Collector, Thiruvallur, vide proceedings dated 23.12.2000, in Na.Ka.No.5727/1999/R1, had canceled the patta granted in favour of the petitioner and one Elumalai in Nazrathpettai Village, S.F.Nos.46/24 and 46/25, bearing patta nos.643 and 644 respectively and in the operative portion of the order, which has also been communicated to the petitioner and other persons namely Mr.Elumalai, who are aggrieved by the said order, are granted liberty to file an appeal before the District Revenue Officer, Thiruvallur, within 30 days from the

date of that order and admittedly, the petitioner did not prefer any appeal.

2. The learned counsel appearing for the petitioner would submit that the petitioner has put up a hut in the land in question and it is also subjected to statutory levies as well as he has also been obtained license for industries and factories, issued by Nazrathpet Panchayat and hence, the high handed action on the part of the respondents, in demolishing the said structure on the ground that it is an encroachment upon the road margin, is per se unsustainable.

3. Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the sole respondent has drawn the attention of this Court to the counter affidavit and would submit that after following the due process of law, in the form of Statutory Notice under Section Tamil Nadu State Highways Act, 2001, dated 15.12.2020, followed by show cause Notice for eviction dated 28.12.2020, the encroachment has been removed along with other encroachments on the stretch of Kamarajar Salai on 12.01.2021 and the Eviction Report was filed in the connected Writ Petition in W.P.No.14107 of 2020, which is also listed today and on instructions, he assures that there will not be any further or reencroachment in the stretch of the said road and the said submission on instructions is placed on record.

4. It is also a well settled position of law that on the mere fact that the encroached part / property is subjected to statutory levies, the same will not confer any right and a useful reference can also be made to paragraph no.38(3) of the decision rendered by the Madurai Full Bench of this Court in 2005 (2) CTC 741 (Ramaraju Vs. The State of Tamil Nadu, rep. By its Secretary to Government, Revenue Department, Fort St.George, Chennai and others), wherein it was held that 'Payment of property tax, provisions of water connection or electricity by themselves cannot be construed as conferring any independent right, if the encroachment is otherwise unauthorised.'

5. In the light of the said facts and circumstances, coupled with the reasons assigned by this Court, this Court is of the considered view that there are no merit in the grounds of challenge made by the petitioner to the impugned notice.

6. In the result, the Writ Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

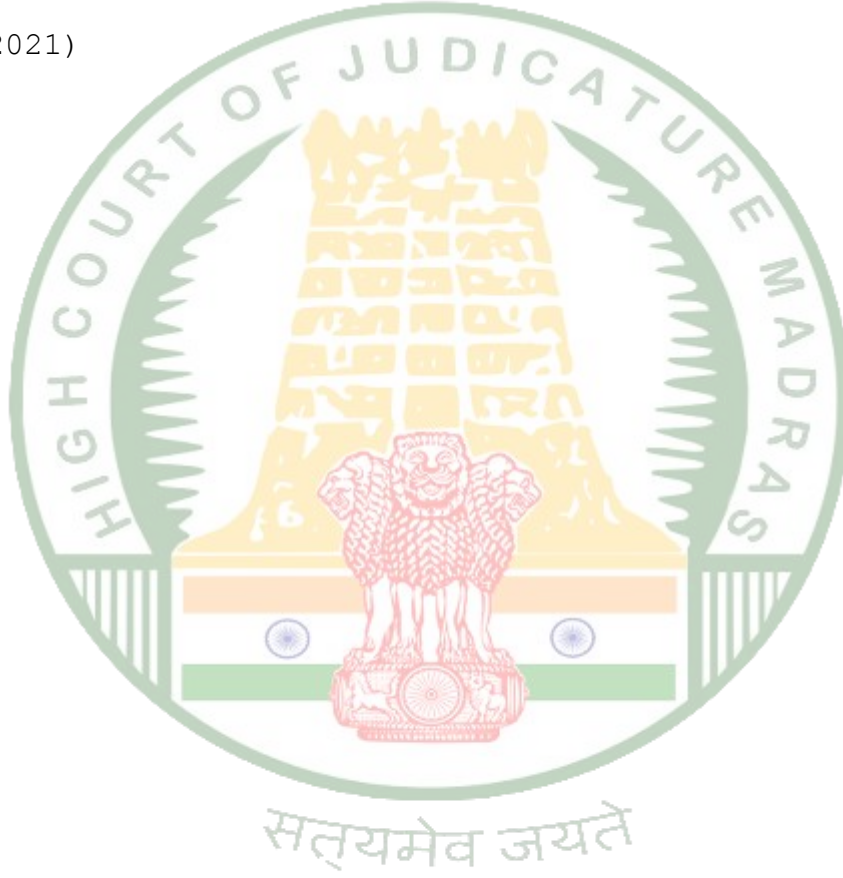
To

The Assistant Divisional Engineer (Highway) C(and)M,
Ambattur Sub Divisional,
Avadi, Thiruvallur District.

+lcc to Mr.G.Mohana Krishnan, Advocate, S.R.No. 4794

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SR(CO)
GN(19/02/2021)



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