

W.M.P.Nos. 3690 & 3688 of 2021
in W.P.No.19232 of 2020

M. SATHYANARAYANAN, J.,
and
A.A.NAKKIRAN, J.

[Order of the Court was made by M.SATHYANARAYANAN, J.]
(Through Video Conferencing)

The petitioner has come forward to file this petition for modification stating among other things that his father Elumalai was in possession and enjoyment of the property situated at Door No.63-A and 64-A, Puliampatti Village, Omalur Taluk, Salem District for very many decades and it is also subjected to statutory levy.

2. The petitioner on an earlier occasion filed W.P.No.38587 of 2003 praying for issuance of a writ of mandamus forbearing respondents 1 to 4 or their men, agents, servants, representatives, employees or any other person from interfering with the peaceful possession of the property situated at Door No.63-A and 64-A, Puliampatti Village, Omalur Taluk, Salem District without complying with the requirements of Sections 3E,3G and 3H of the National Highways Act, 1956. The said writ petition came to be disposed of at the admission stage itself by observing that the writ petitioner would be satisfied, if the respondents determine the

compensation and issued further direction to conclude the acquisition proceedings determining the compensation as expeditiously as possible.

3. The official respondents, aggrieved by the said final orders, has preferred W.A.Nos. 789 & 1689 of 2005 and the writ appeals came to be disposed of vide judgment dated 14.07.2019 and it is relevant to extract paragraphs 10 and 11:-

"10. Under the National Highways Act, "land" includes "benefits arising out of any land and things attached to the earth or permanently fastened to anything attached to the earth". Section 3A of the Act deals with the power of the competent authority to acquire any land; Section 3C deals with objections to the use of the land; Section 3D deals with the acquisition of the land; Section 3E deals with taking over possession of the land; Section 3F deals with the right to enter the land and Section 3G deals with the determination of amount payable as compensation for the land so acquired. The land in question undoubtedly is a cart track. Therefore, the first respondent is not entitled to claim any compensation as a land owner. His possession of the land is only as an encroacher. As observed in Ahmedabad Municipal Corporation's case (supra), whether the encroachment is of recent origin or it is there for a long duration, there is no difference in the consequence which is, that the encroacher has to vacate the place and in the event of resistance, appropriate and reasonable force can be used to have the encroachment removed. Therefore, the first respondent does not have any right as an owner of a land. Even in Annamalai Club's case (supra) where the genesis of possession was legal but the possession continued beyond the expiry of the

license period, the Supreme Court said that force or unlawful means cannot be used to evict the occupant, but some time should be given to enable the occupant to give vacant and peaceful possession of the land. In fact, in that case, the possession had been taken in a manner which the Supreme Court did not approve of. But yet, the Supreme Court did not think that any notice afresh needed to be given though it laid down the law that the owner cannot take law into his own hands and eject the person entitled to juridical possession without the course of the law.

11. The question is, whether the first respondent is entitled to any compensation. A portion of the building put up by the first respondent in the acquired land has been demolished and there were also trees in the land when it was acquired for laying the National Highway. In the decisions referred to by the learned senior counsel, especially in *Sharda Devi's case* (supra), the Supreme Court makes the difference between compensation payable in respect of the land and in respect of the buildings and holds that where the Government is the owner of the land, payment of compensation must be only for the superstructure. Therefore, we do not think that the order of the learned single Judge requires any interference, but we clarify it and explain it in the following terms:

The first respondent is not entitled to compensation for the land acquired, since he is not the owner thereof. But, he may be heard on the question of compensation that is payable in respect of the building put up by him on the said land, for which he has also been paying property tax for several years and the like. After so hearing him, it is open to the authorities to pass appropriate orders in accordance with law."

4. Learned counsel appearing for the petitioner by drawing the attention of the Court to paragraph 6 of the order dated 17.12.2020 made in W.P.No. 19292 of 2020 filed by the first respondent herein, would submit that despite the direction given by this Court and without following the due process of law, some portion of the land needs compensation are sought to be interfered with and, therefore, prays for accommodation.

5. Per contra, learned counsel appearing for the first respondent would submit that in the light of the categorical finding given in the judgment dated 14.07.2019 in W.A.Nos. 789 & 1689 of 2005 coupled with the directions given in the order, which is the subject-matter of the present petition, the petitioner cannot expect to have any grievance and prays for dismissal of this modification petition.

6. This Court has considered the rival submission and also perused the materials placed before us.

7. The judgment dated 14.07.2019 made in W.A.Nos. 789 & 1689 of 2005 has recorded a categorical finding that the first respondent/writ petitioner herein is an encroacher and, at best, he

may be entitled for compensation in respect of the superstructure put up by him and according to the learned counsel appearing for the petitioner, the petitioner has also received the compensation in respect of the superstructure. This Court, in the order, which is the subject-matter of the contempt, merely has made an observation that without going into the merits of the fact claim projected by the first respondent/writ petitioner, directed respondents 3 and 4 to cause joint inspection of the land in S.F.Nos.31/1,61,62,63 and 64 and if the result of the inspection reveals any infraction on the part of the private respondents or any other persons, shall take immediate, necessary and appropriate steps, in accordance with law, by also adhering to the principles of natural justice and as such, there is no necessity to modify the order. If the petitioner is of the view that the order, which is the subject-matter of this modification petition, has not been complied with, in letter and spirit, he is at liberty to workout his remedy in accordance with law and not by way of this modification petition.

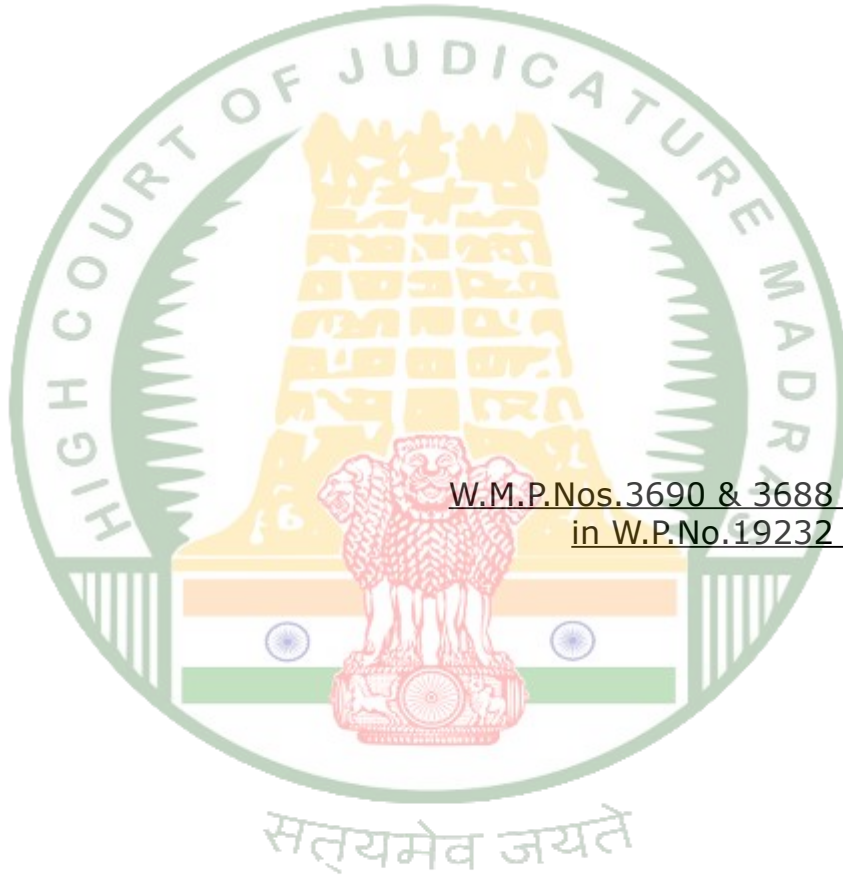
8. In the result, the modification petition stands dismissed.

Consequently, W.M.P.No.3688 of 2021 is also dismissed.

(M.S.N., J.) (A.A.N., J.)
19.02.2021

Internet: Yes
ssm

M. SATHYANARAYANAN, J.,
and
A.A.NAKKIRAN, J.,
(ssm)



W.M.P.Nos.3690 & 3688 of 2021
in W.P.No.19232 of 2020

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