

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 12.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN
WP.No.3111 of 2021
and W.M.P.No.3527 of 2021

1.S.Perumal
2.K.Rajendran
3.K.Santhi
4.A.Selvi
5.S.Elumalai
6.T.Velu
7.C.Sundar
8.R.Shanmugam .. Petitioners

Versus

1.The District Collector,
Thiruvannamalai District,
Thiruvannamalai.
2.The Tahsildar,
Thiruvannamalai Taluk,
Thiruvannamalai District,
Thiruvannamalai.
3.The Executive Engineer,
Highways Department,
Thiruvannamalai District,
Thiruvannamalai.
4.The Assistant Divisional Engineer,
Highways Department,
Thiruvannamalai District,
Thiruvannamalai. .. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for the records pertaining to the impugned notices in proceeding No.7/201/U./ dated 24.12.2020 issued by the 4th respondent and quash the same and pass such further or other orders as this Court may deem fit.

For Petitioners: Mr.Richardson Wilson

For RR 1 to 4 : Mr.R.Vijayakumar
Additional Government Pleader

ORDER

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

Heard the submission of Mr. Richarson Wilson, learned counsel appearing for the petitioners and Mr. R. Vijayakumar, learned Additional Government Pleader who accepts notice on behalf of the respondents 1 to 4.

2. The learned counsel appearing for the petitioners would submit that the petitioners belong to Hindu Irular community and they belong to lowest strata of society and also economically backward and by putting up huts in S.F.No.28/1 and S.F.No.37/1 in Keelanaikarai Village, Thiruvannamalai District, which is classified as 'Government waste dry land', they are in occupation of nearly five decades and odd and the petitioners, who are in long possession and enjoyment, also prayed for issuance of patta and it is yet to be considered. It is the further submission of the learned counsel appearing for the petitioners that all of a sudden, to the shock and surprise of the petitioners, they have been issued with individual notices by the 4th respondent, alleging that they have encroached upon road margin.

3. It is the submission of the learned counsel appearing for the petitioners that the classification of the said land as road margin itself is incorrect, for the reason that the land has been classified as 'Government Dry Waste Land' and considering the fact that they belong to below poverty line, and also they find it extremely difficult to meet both ends for decades together, prays for appropriate orders for protecting their possession and enjoyment.

4. Per contra, Mr. R. Vijayakumar, learned Additional Government Pleader would submit that they have found that the petitioners had encroached upon road margin by putting up thatched sheds and action has been initiated by following the due process of law, by issuing the impugned notices and it cannot be faulted with and prays for dismissal of this Writ Petition.

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

6. It is relevant to extract Section 28 of the Tamil Nadu Highways Act, 2001:

"Section 28: Prevention of encroachment:

28(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."

The proviso to Section 28(ii) speaks about the submission of any representation received within the time limit shall be considered by the authority or officer concerned before passing final orders.

7. This Court, taking into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioners in this Writ Petition, permits the petitioners herein to submit individual representations by enclosing relevant and authenticated documents, as to their possession and enjoyment of the respective lands with the thatched sheds, to the 4th respondent within a period of four weeks from the date of receipt of a copy of this order / uploading of the order in the website and upon receipt of the same, the 4th respondent is directed to consider the said representation on merits and in accordance with law and pass appropriate orders within a further period of six weeks thereafter and communicate the decision taken, to the petitioner and till such time, shall defer further decision in terms of the impugned notices issued to the petitioners.

8. The Writ Petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The District Collector,
Thiruvannamalai District,
Thiruvannamalai.

2.The Tahsildar,
Thiruvannamalai Taluk,
Thiruvannamalai District,
Thiruvannamalai.

3.The Executive Engineer,
Highways Department,
Thiruvannamalai District,
Thiruvannamalai.

4.The Assistant Divisional Engineer,
Highways Department,
Thiruvannamalai District,
Thiruvannamalai.

+1cc to Mr.Richardson Wilson , Advocate SR.No. 8223

+1 cc to Government Pleader Sr.No. 8482

WP.No.3111 of 2021

A.SK(16.03.2021)