IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 30.03.2021
CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN
WP.No.6915/2021 & WMP.Nos.7469, 7470 & 7472/2021

Jaganathan .. Petitioner

Versus

1.The Government of Tamil Nadu
represented by its Secretary
Highways and Minor Ports Department
Secretariat, Fort St George
Chennai.

2.The Divisional Engineer [H]
Krishnagiri State Highways
Department, Krishnagiri Range
Krishnagiri Town and District.

3.The Assistant Divisional Engineer [H]
Highways Construction & Maintenance
Hosur Sub Division, State Highways Department
Hosur, Krishnagiri District.

4.Dhayalal Mavaji Patel .. Respondents

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 in Na.Ka.No.15/2021/U dated 10.02.2021 [affixed in petitioner's home on 26.02.2021] on the file of the 3rd respondent and quash the same.

For Petitioner : Mr.V.Raghavachari
for Mr.S.C.Vishwanth
For RR1 to 3 : Mr.R.Vijayakumar
Additional Government Pleader
For R4 : Mr.R.Bharath Kumar

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.

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(2) Mr.R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of respondents 1 to 3 and Mr.R.Bharath Kumar, learned counsel accepts notice on behalf of the 4th respondent.

(3) The petitioner is a resident of AmmanNagar, ITI, Denkanikottai Main Road, HCF Post, Hosur – 635 109 and according to him, he is residing in the said address for more than 30 years and the said house is located / mentioned in S.No.195, of Mathigiri Village, Hosur Taluk, Krishnagiri District and the said land, as of now, is categorised as '' State Highway Road ''. The petitioner would further aver that in the said Survey Number, there exists one Kottaimariyamman Temple, which is there for more than 220 years and he is the pujari/priest of the said temple and also the third generation priest of the said temple and his house is a terraced house, located adjacent to the temple. The petitioner would aver that in lieu of the long existence of the temple, it is very famous and very many devotees used to throng the said temple on festival occasions. The petitioner would further state that during the last week of August 2020, some persons, claimed to be the officers belonging to the State Highways Department started visiting his house and attempted to dispossess him without resorting to due process of law and further aver that there is a considerable distance between the road margin and the location of his house and unlawful act on the part of the officials of the respondents 1 to 3, especially to dispossess the petitioner from his house would definitely cause hardship and difficulties in the light of the onset and thick spread of COVID-19 pandemic virus.

(4) The learned counsel for the petitioner would submit that the officials of the respondents purported to have taken action based upon the complaint given by the 4th respondent who has also filed WP.No.11622/2020 praying for issuance of a writ of mandamus, directing the Collector of Krishnagiri District and the Divisional Engineer, Highways Department, Krishnagiri, to remove the encroachment made by the 6th respondent, viz., Mani, in S.No.195 [Hosur – Denkanikottai Highway] of Mathigiri Village, Hosur Taluk, Krishnagiri District based upon his representation dated 23.03.2020. The said writ petition was entertained and vide final order dated 08.03.2021, this Court has taken note of the submission made by the learned counsel for the 6th respondent therein as to the invocation of the appeal remedy u/s.55 of the Tamil Nadu Highways Act and found that the writ petition is not maintainable and granted liberty to him to work out his further remedy in accordance with

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law before the competent Forum in the light of the order of rejection passed by the Assistant Divisional Engineer, Hosur Sub Division, State Highways Department, Hosur, Krishnagiri District.

(5) The primordial submission made by the learned counsel for the petitioner, by drawing the attention of this Court to pages No.41 and 42 of the typed set of documents filed in support of the writ petition as well as the additional typed set of papers, wherein the copy of the representation dated 29.03.2020 submitted by the petitioner to the official respondents as to the information sought for by him with regard to the boundaries of the said Highways No.17-A in the light of the fact that he has also paid necessary fess for surveying the land. In sum and substance, it is the submission of the learned counsel for the petitioner that since the temple is in existence for more than 2 centuries and that the petitioner is also hereditary pujari of the temple and had put up a superstructure and residing along with his family, which is far away from the State Highways margin, there is no need or necessity to remove the said construction alleging encroachment and further points out that the official respondents are dancing to the tunes of the private respondent for obvious reasons and therefore, prays for deferment of further proceedings till survey and inspection as requested by the petitioner vide his representation dated 29.03.2020 is done.

(6) Per contra, the learned Additional Government Pleader appearing for respondents 1 to 3 would submit that the petitioner, on an earlier occasion, filed WP.No.18547/2020, challenging the notice dated 11.11.2020 passed by the 3rd respondent and to quash the same with a further direction to the 2nd respondent therein, not to disturb his peaceful possession and enjoyment of the land in S.No.195, Amman Nagar, ITI, Denkanikottai, Hosur and the said writ petition came to be disposed of on 11.12.2020 by granting liberty to the petitioner to submit a detailed representation by enclosing the relevant and authenticated documents to the 2nd respondent therein, within the stipulated time frame with a further direction by directing the said official to consider and dispose of the said representation in the light of proviso to sub-section [2] of Section 28 of the Tamil Nadu Highways Act, within a further period of six weeks thereafter and in the interregnum, the 2nd respondent therein was also directed to defer further proceedings till the disposal of the representation. Accordingly, the 2nd respondent has considered the representation dated 05.01.2021 submitted by the petitioner and by a speaking

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order dated 10.02.2021, has rejected the said representation with a further direction to remove the encroachment within seven days from the date of receipt of the copy of the notice and challenging the legality of the same, the petitioner has also filed an appeal u/s.55[1] of the Tamil Nadu Highways Act, before the 1st respondent.

(7) The learned Additional Government Pleader would further submit that in the light of the order dated 08.03.2021 made in WP.No.11622/2020, the said appeal is not maintainable and as such, the petitioner came forward to file the present writ petition, challenging the said proceedings. It is also pointed out by the learned Additional Government Pleader that the temple as well as the superstructure in which the petitioner claims to be residing which is lies adjacent to the temple, are encroachments and as long as due process of law is being followed, it is not open to the petitioner to make any grievance and admittedly, the petitioner is not the owner of the land in question and as such, the claim made by the petitioner lacks merits and substance and therefore, prays for dismissal of this writ petition.

(8) This Court paid its best attention to the rival submissions and also perused the materials placed before this Court as well as the photographs made available in the typed set of documents.

(9) A perusal and consideration of the materials placed before this Court by the petitioner, would disclose that the temple lies just adjacent to the Highways and the superstructure in which the petitioner claims to be residing along with his family, is also located right adjacent to the temple.

(10) The primordial submission made by the learned counsel for the petitioner is that since the said superstructure is far away from the road margin and is not causing any hindrance to the free flow of traffic, there is no need or necessity to remove the said superstructure and further points out that the petitioner is the hereditary pujari and his forefathers had also acted as pujaris of the century old temple and without causing survey and inspection, the respondents under the garb of proceeding under the provisions of the Tamil Nadu Highways Act, cannot remove or demolish the superstructure and thereby, disturb the peaceful possession and enjoyment of the petitioner.

(11) The petitioner claims that the temple is in existence for nearly 220 years and his forefathers had acted as

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hereditary pujaris and by way of succession, the petitioner is doing so. It is to be noted at this juncture that it is not even the claim of the petitioner that he is the pattadhar of the said land in question wherein he has put up a superstructure and that apart, the temple itself lies very close proximity to the State Highways.

(12) It is a well settled position of law that even an encroacher is entitled to be put on notice before causing eviction and on an earlier occasion, the petitioner made a challenge to the similar kind of notice dated 11.11.2020 by filing WP.No.18547/2020 and this Court, vide final orders dated 11.12.2020 has granted liberty to the petitioner to submit a detailed response to the said notice with a further direction, directing the 3rd respondent herein to consider and dispose of the said representation within the stipulated time frame within a further direction, directing the 3rd respondent, who was arrayed as the 2nd respondent, to defer further proceedings in the meanwhile. Accordingly, the 3rd respondent has considered the said representation and rejected the request vide impugned order dated 10.02.2021.

(13) Whether the petitioner is entitled to remain in possession in question, by way of descriptive right, cannot be considered by this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, and as long as due process of law being followed, it is not open to the petitioner who is classified as an encroacher, to make a grievance in this regard.

(14) This Court, on a careful consideration and scrutiny of the materials, is of the considered view that there is no error apparent or infirmity in the impugned order passed by the 3rd respondent and finds no merit in this writ petition.

(15) In the result, the writ petition is dismissed confirming the order passed by the 3rd respondent dated 10.02.2021. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

AP

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To
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  Highways and Minor Ports Department
  Secretariat, Fort St George
  Chennai.

2.The Divisional Engineer [H]
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  Department, Krishnagiri Range
  Krishnagiri Town and District.

3.The Assistant Divisional Engineer [H]
  Highways Construction & Maintenance
  Hosur Sub Division, State Highways Department
  Hosur, Krishnagiri District.

+cc to M/s.R.Bharath Kumar,Advocate, Sr.No.20638
+cc to M/s.S.C.Vishwanth,Advocate, Sr.No.20630
+cc to Govt Pleader Sr.No.21024

WP.No.6915/2021

PMK(CO)
baf 07/05/2021

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