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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.No.32826 of 2013

and

M.P.Nos.1 of 2013 & 1 of 2015

1.S.Arunachalam

2.A.Shanthi

...Petitioners

Vs.

1.The State of Tamil Nadu
rep. by it's Secretary to Government
Highways Department
Fort St.George
Chennai – 600 009

2.The Executive Engineer
State Highways Department
Saidapet
Chennai – 600 015

3.The District Collector
Kancheepuram
at Kancheepuram District

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, forbearing the respondents from expropriating the front portion of the petitioners property, to an extent of 1214 sq.ft, abutting the Tambaram – Velachery Road, comprised in Gramanatham, S.No.65, situated in Old No.142, New No.39, Vengaivasal Village, Tambaram Taluk, Kancheepuram District, except by due process of law.

For Petitioner : Mr.N.Rajan

For Respondents : Mr.T.Venkatesh Kumar
Special Government Pleader



O R D E R

The relief sought for in the present Writ Petition is to forebear the respondents from expropriating the front portion of the petitioners property to an extent of 1214 Sq.ft., abutting the Tambaram - Velachery Road, comprised in Gramanatham, S.No.65, situated in Old No.142, New No.39, Vengaivasal Village, Tambaram Taluk, Kancheepuram District except by due process of law.

2. The learned counsel for the petitioner made a submission that the petitioners are the owner of the subject property. The respondents are bound to follow the due process of law, if at all action needs to be taken for executing the project for expansion of road. In the present case, the petitioners raised an allegation that the respondents have not followed the rule of law and infringing the property right of the petitioner by encroaching the front portion of the property, in occupation of the petitioner. Thus, the petitioners are constrained to move the present Writ Petition.

3. The learned Special Government Pleader appearing on behalf of the respondents disputed the said contention by stating that the subject property is classified as Gramanatham land and the petitioners cannot claim title / ownership over the same. In respect of Gramanatham land, patta is issued on certain conditions and therefore the ownership cannot be claimed by the petitioners in respect of the Gramanatham land. The road expansion project is under implementation and the Highways Authority are measuring the land for the purpose of expansion of the road. Under these circumstances, the petitioners have filed the present Writ Petition. He would contend that the petitioners have no right in respect of Gramanatham land and the Writ Petition needs to be dismissed.

4. Even the counter affidavit filed by the respondents states that the petitioners have approached the High Court while demarcation of Highways boundaries is undertaken by the competent authorities. The State Government has accorded sanction for widening from Four Lane to Six Lane from Km 15/5 - 17/5 of Marmalong Bridge Irumbuliyur (Velachery - Tambaram Road) Vandalur - Mudichur - Oragadam - Walajabad Road (SH 48), including Construction of Storm water Drain. In obedience to the Government orders, the Highways Authorities are taking action for above Scheme work. The Highways Authority are carrying out the above work and also taking action to demarcate the Highways boundaries with the help of the survey staff under the control of the Tahsildar Tambaram.

5. Under these circumstances, the petitioners have chosen to file the present Writ Petition. The learned Special Government Pleader for the respondents has relied on Section 28 (1) of the Tamil Nadu Highways Act, 2001 and contended that



the Highways authority or any person authorized by it in this behalf shall, at such time as may be considered necessary, conduct such checks and periodical inspection, of the Highways boundaries, with the view to ensure the prevention of unauthorized encroachments and the removal of such encroachment.

6. The Tamil Nadu Highways Act, 2001, under Section 28 (2) states as follows:

The Highways authority or any person authorized 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 Highways or in any area where the construction or development of a Highways is undertaken or proposed to be undertaken.

(ii) Remove any immovable structure, whether permanent or temporary in nature, encroaching the Highways 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.

7. Relying on Section 28(2) of the Act, the respondents contended that the encroachments shall be removed without any notice i.e, encroachments such as 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 Highways or in any area where the construction or development of a Highways is undertaken or proposed to be undertaken.

8. It is further stated that action or eviction of encroachment will be taken only according to the provisions and rules of law in force. Keeping the horizon year for the Master Plan as 2026, future demands were worked out and the Second Master Plan was prepared and approved by the Government. It is the policy of the Government after forecasting the future needs, the right of way of the roads in Chennai Metropolitan Area were fixed and as an implementing agency, Highways Department is executing the sanctioned projects as per standards.

9. In view of the interim order granted in the present Writ Petition, the respondents are unable to proceed with the project and already there is a huge delay in implementation of such projects and on account of the delay the public projects are affected and causing hindrance to the free flow of traffic in that locality.



10. The learned Special Government Pleader brought to the notice of this Court that vacate stay petition is filed on 20th February 2015 and was not taken up for hearing for about 6 six years. Because of the delay, the authorities are unable to complete the project and results in greater hardship to the public at large, as expansion of road in that particular locality is imminent for free flow of traffic.

11. This Court is of the considered opinion that the petitioners claim that they are owners of the portion of land and the respondents are claiming that it is a Gramanatham land and a mere patta would not confer any title on the petitioners. The dispute in this regard cannot be resolved in the present Writ Petition. However, the Highways Authority are empowered under the provisions of the Tamil Nadu Highways Act, to measure the land and initiate all appropriate actions including removal of encroachments, to implement the project which is already sanctioned by the Government.

12. The Tamil Nadu Highways Act contemplates 48 hours notice, if the Highways Authority have taken a decision to measure the land inside the premises of the occupants. Therefore, information has to be provided to the persons before conducting any such measurement or survey.

13. As far as the encroachers are concerned, the Highways Authority are empowered to invoke the provisions of the Highways Act and remove the encroachments by following the procedures. If it is a private land, then an information by way of 48 hours notice is required for conducting measurement.

14. At the outset, the procedures contemplated under the Tamil Nadu Highways Act, 2001 has to be followed while executing the road expansion projects as sanctioned by the Government.

15. Taking into account the facts and circumstances of the case, this Court is of the considered opinion that the reliefs as it sought for cannot be granted. However, it is made clear that the respondents / Highways Authorities are bound to follow the procedures as contemplated under the provisions of the Highways Act, while implementing the road expansion project or any other project in that locality.

16. In view of the long delay, the respondents shall immediately proceed with the project in the interest of public and identify all encroachments in that locality and remove such encroachments, if any, and complete the project as expeditiously as possible.



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17. With these directions, the Writ Petition stands disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
The State of Tamil Nadu,
Highways Department,
Fort St.George,
Chennai – 600 009.
- 2.The Executive Engineer,
State Highways Department,
Saidapet,
Chennai – 600 015.
- 3.The District Collector,
Kancheepuram,
at Kancheepuram District.

+1cc to M/s.N.Rajan, Advocate SR. No.62585
+1cc to the Government Pleader SR. No.63534

W.P.No.32826 of 2013

RP (CO)
PR (08/12/2021)