



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.33130 of 2013

and

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

Dr.K.Sudha

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its 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, Kancheepuram District.

...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, praying to issue a writ of mandamus, forbearing the respondents from expropriating the front portion of petitioner's property to an extent of 2000 sq.ft., abutting the Tambaram-Velachery Road, comprised in Old S.No.24B/1 (part), New S.No.214/1, and Old No.24B/1(part) New S.No.214/8, Rajakilpakkam Village, Tambaram Taluk, Kancheepuram District, out of the total extent of 3954 sq.ft., except by due process of law.

For Petitioner	:	Mr.N.Rajan
For Respondents	:	Mr.K.M.D.Muhilan Government Advocate

O R D E R

The relief sought for in the present writ petition is to forbear the respondents from expropriating the front portion of petitioner's property to an extent of 2000 sq.ft., abutting the Tambaram-Velachery Road, comprised in Old S.No.24/B (part), New S.No.214/1, and Old No.24B/1(part) New S.No.214/B, Rajakilpakkam Village, Tambaram Taluk, Kancheepuram District, out of the total



extent of 3954 sq.ft., except by due process of law.

2. The grievance of the writ petitioner is that the officials of the Highways department are attempting to infringe the property rights of the petitioner. It is contended that such an infringement of right is impermissible without following the due process of law. Thus, the petitioner is constrained to move the present writ petition.

3. It is contended that the authorities entered upon into the land belongs to the petitioner and the land being the patta land, the official respondents cannot enter without following the due process of law.

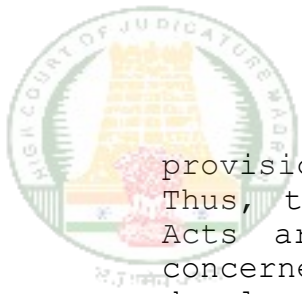
4. There cannot be any other opinion in respect of the property rights of the citizen. In general, the property right can be taken away only by following the due process of law by the authorities of the State or Union, as the case may be.

5. The learned government counsel appearing on behalf of the respondents countered by stating that the writ petition is filed merely on an apprehension and the authorities have no proposal to infringe the civil rights of parties, without following the due process of law. The counter affidavit filed by the 2nd respondent would reveal that as per the Master Plan II of Chennai Metropolitan Development Authority, the right of way for Tambaram - Velachery road is 45 meters and the project is approved by the Government in G.O.Ms.No.190, Housing and Urban Development Department dated 02.09.2008 and notified in Government Gazette Extraordinary No.266, Part II-Section-2, dated 02.09.2008. As per the Master Plan, land frozen for street alignment shall be made available for the road widening purpose by compulsory acquisition or by transfer of development rights.

6. In the counter it is stated that while demarcation of the Highways boundary in the Highways road is being carried out, the writ petitioner had moved to the Hon'ble High Court with an apprehension that the encroachments in the said Highways land will be demolished without issuing any notice to the writ petitioner.

7. It is contended that the encroached portion, if any, is to be removed by invoking the provisions under Section 28(2)(ii) of Tamil Nadu Highways Act, 2001.

8. In view of the facts and circumstances established, it is made clear that the encroachments in highways can be removed by following the provisions of the Tamil Nadu Highways Act, 2001. If the lands are classified as government poramboke land,



provisions under the Land Encroachment Act, to be followed. Thus, to evict the encroachers, the relevant provisions of the Acts are to be followed. As far as the patta lands are concerned, if such lands are required for the completion or development of the road, as per the Master Plan, then appropriate proceedings are to be instituted for acquisition by following the provisions under the relevant acquisition laws. This being the procedures as contemplated under the relevant acquisition laws. This being the procedures to be followed by the authorities competent, infringement of civil rights regarding property right can never be attempted.

9. For measuring the highways road, or otherwise, it is left open to the public authority to perform their public duties in the manner prescribed. The persons who are in possession cannot raise any objection in respect of the measurement of the highways boundary or the nearby properties.

10. With these observations, the writ petition stands disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

ars/mka

To

1.The 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, Kancheepuram District.

+1cc to the Government Pleader, S.R.No.55122

W.P.No.33130 of 2013
and

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PMK(CO)
CB(12/11/2021)