

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.Nos.8251, 8254, 8256 & 8257/2021
&
WMP.Nos.8796, 8797, 8799 & 8801/2021

D.Sankar ... Petitioner in WP.No.8251/2021
D.Murugan ... Petitioner in WP.No.8254/2021
V.Rajendran ... Petitioner in WP.No.8256/2021
M.Elumalai ... Petitioner in WP.No.8257/2021

Versus

1.The District Collector
District Collectorate,
Chengalpattu District.
2.Assistant Divisional Engineer
[Highways Department]
Tambaram Sub Division, Velachery
Chennai 600 042. ... Respondents in all WPs

Common Prayer in all the Writ Petitions:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 2nd respondent to consider the petitioners' representation dated 20.03.2021 and pass final order as per the proviso to sub-clause ii Clause [2] Section 28 of the Tamil Nadu Highways Act, 2001.

For Petitioners in
all Writ Petitions : Mr.S.Patrick

For R1 in all Writ
Petitions : Mr.S.Kamalesh Kumar
Government Advocate

For R2 in all Writ
Petitions : Mr.M.Loganathan
Additional Government Pleader

COMMON ORDER

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

- (1) By consent, the writ petitions are taken up for final disposal and are disposed of by this common order as the issue involves and to be adjudicated, is one and the same.
- (2) Mr.S.Kamalesh Kannan, learned Government Advocate accepts notice on behalf of the 1st respondent and Mr.M.Loganathan, learned Additional Government Pleader accepts notice on behalf of the 2nd respondent.

WP.No.8251/2021:-

- (3) The petitioner claims to have purchased the land admeasuring to an extent of 133 sq.ft., in Puthur Village New S.No.409/2 and thereafter, appears to have put up a superstructure without any planning permission. The petitioner claims that patta has also been issued by the jurisdictional Special Tahsildar, Town/natham Land Tax Scheme and the statutory levies have also been paid in respect of the said superstructure. The petitioner was issued with a Notice dated 17.03.2021 by the 2nd respondent which was received by the petitioner on 18.03.2021, for which, he has also submitted a detailed representation on 20.03.2021 and since the said representation did not invoke any kind of response, the petitioner is constrained to approach this Court by filing the present writ petition, praying for objective consideration of the said representation dated 20.03.2021.

WP.No.8254/2021:-

- (4) Originally, the father of the petitioner claimed to have purchased the land admeasuring to an extent of 0.10 cent vide registered Sale Deed No.1062/1983 dated 10.03.1983, in Puthur Village New S.No.409/2 and thereafter, by way of succession, the petitioner is in possession and enjoyment of the same and he appears to have put up a superstructure without any planning permission. The petitioner claims that patta has also been issued by the jurisdictional Special Tahsildar, Town/natham Land Tax Scheme and the statutory levies have also been paid in respect of the said superstructure. The petitioner was issued with a Notice dated 17.03.2021 by the 2nd respondent which was received by the petitioner on 18.03.2021, for which, he has also submitted a detailed representation on 20.03.2021 and since the said representation did not invoke any kind of response, the petitioner is constrained to approach this Court by filing the present writ petition, praying for objective consideration of the said representation dated 20.03.2021.

WP.No.8256/2021

- (5) The petitioner claims to have purchased the land admeasuring to an extent of 2813 sq.ft., in Sunnambu Kollathur Village New S.No.409/2, Tambaram Taluk, Kanchipuram District vide registered Release Deed dated 24.08.1988, registered on the file of the office of the Sub Registrar, Pallavaram and thereafter, appears to have put up a superstructure without any planning permission. The petitioner claims that patta has also been issued by the jurisdictional Special Tahsildar, Town/natham Land Tax Scheme and the statutory levies have also been paid in respect of the said superstructure. The petitioner was issued with a Notice dated 17.03.2021 by the 2nd respondent which was received by the petitioner on 18.03.2021, for which, he has also submitted a detailed representation on 20.03.2021 and since the said representation did not invoke any kind of response, the petitioner is constrained to approach this Court by filing the present writ petition, praying for objective consideration of the said representation dated 20.03.2021.

WP.No.8257/2021:-

- (6) The petitioner claims to be in possession of the land admeasuring to an extent of 6820 sq.ft., along with the superstructure in Sunnambu Kollathur Village Natham S.No.402/3 vide registered Release Deed dated 26.02.2010 bearing Doc.No.983/2010 registered on the file of the office of the Sub Registrar, Pallavaram and another piece of land admeasuring to an extent of 3 cents in S.No.379/2010, patta No.324, Madipakkam Part-2, Sunnambu Kollathur Village. The petitioner claims that statutory levies have also been paid in respect of the said superstructure. The petitioner was issued with a Notice dated 17.03.2021 by the 2nd respondent which was received by the petitioner on 18.03.2021, for which, he has also submitted a detailed representation on 20.03.2021 and since the said representation did not invoke any kind of response, the petitioner is constrained to approach this Court by filing the present writ petition, praying for objective consideration of the said representation dated 20.03.2021.
- (7) The learned counsel for the petitioners would submit that in the light of the fact that the landed properties and in one case, the superstructure had also been purchased through a Registered Sale Deed/Partition Deed and mutation of revenue records also took place followed by levying of statutory levies, the action initiated by the 2nd respondent under the provisions of the Tamil Nadu Highways Act, 2001, is per se unsustainable and since detailed representations dated 20.03.2021 had also been submitted by the petitioners, by enclosing all relevant and authenticated documents, it is obligatory on the part

of the 2nd respondent to consider and give a meaningful disposal of the representations and prays for appropriate orders.

- (8) The learned Government Advocate as well as the learned Additional Government Pleader appearing for the respondents 1 and 2 would submit that in response to the petitioners' representations, the office of the 2nd respondent has sent a communication dated 23.03.2021 bearing No.182/2021/,tm, 179/2021/,tm and 178/2021/,tm to the petitioners in WP.Nos.8251, 8256 & 8257/2021 respectively stating among other things that in respect of the houses and commercial establishments, put up on the patta lands, the same would not be removed and in respect of encroachments on the non-patta lands, action would be taken to remove the same for the purpose of road expansion and in the light of the said stand taken by the 2nd respondent, the apprehension expressed by the petitioners is wholly unfounded and prays for dismissal of these writ petitions.
- (9) The communications of the 2nd respondent dated 23.03.2021 sent to the respective petitioners in WP.Nos.8251, 8256 and 8257/2021 is taken on file and record.
- (10) This Court has considered the rival submissions and also perused the materials placed before it.
- (11) It is relevant to extract Section 28 of the Tamil Nadu Highways Act, 2001:-

28.Prevention of encroachment:-

(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 Ac, after issuing a show cause notice against such removal, returnable within a period of seven days from the

date of receipt thereof;''

- (12) The petitioners submitted their response dated 20.03.2021 to the notice dated 17.03.2021 sent by the 2nd respondent. During the course of arguments, this Court has also put a query to the learned counsel for the petitioners that the superstructures put up by the petitioners are authorised / deviated / unauthorised and the learned counsel is unable to give any answer for want of instructions.
- (13) In the light of the stand taken by the 2nd respondent in the Communications dated 23.03.2021, the superstructures in the form of houses and the buildings used for commercial purposes put up on the respective patta lands of the petitioners, would not be disturbed and action would be taken to remove the encroachment in respect of non-patta lands for expansion of the road by invoking the relevant provisions of the Tamil Nadu Highways Act, 2001, no further orders are necessary in these writ petitions and the apprehension expressed by the petitioners has been answered. It is also open to the jurisdictional Local Body to cause inspection of the superstructures put up by the petitioners by putting them on advance notice and if the result of the inspection reveals that the said superstructures had been put up in deviation of the sanctioned plan/unauthorised one, is also at liberty to initiate necessary, immediate and appropriate action in accordance with law and complete the said exercise as expeditiously as possible.
- (14) The writ petitions stand disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS-VII)

//True copy//

WEB COPY
Sub Assistant Registrar

AP

To

1.The District Collector
District Collectorate,
Chengalpattu District.

2.Assistant Divisional Engineer
[Highways Department]
Tambaram Sub Division, Velachery
Chennai 600 042.

+4ccs to Mr.V.Meganathan, Advocate SR.No.22020, 22022, 22023
and 22021

+1cc to Government Pleader SR.No.21908
WP.Nos.8251, 8254, 8256 & 8257/2021

KKN(CO)
GMY(05/07/2021)



WEB COPY