



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.No.33805 of 2013

and

M.P.Nos.1 of 2013 & 1 of 2014

Maria Suseela

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Principal Secretary to Government,
Highways and Minor Ports Department,
Fort St. George, Madras 600 009.

2.The Assistant Divisional Engineer,
Highways Department,
Government of Tamil Nadu,
Nandanam, Madras.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to forbear the respondents from interfering with the peaceful possession and enjoyment of the property bearing Survey No.220-21, Old Survey No.29, Velachery Main Road, Chennai - 73.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.C.Kathiravan
Government Advocate

ORDER

(Through Video Conferencing)

The relief sought for in the present writ petition is to forbear the respondents from interfering with the peaceful possession and enjoyment of the property bearing Survey No.220-21, Old Survey No.29, Velachery Main Road, Chennai - 73.

2.The writ petition is filed seeking a relief in the nature of an injunction in respect of an immovable property. Such disputes involving civil right of the parties cannot be adjudicated in a writ proceedings under Article 226 of the Constitution of India. For grant of injunction, examination of documents, evidence, including oral evidence, is required and such an exercise cannot be done in a writ proceedings.



Thus, the parties are bound to approach the competent Civil Court of Law for the purpose of establishing their civil rights in respect of the property.

3.The 2nd respondent filed a counter affidavit and more specifically, in Para Nos.6 and 7, it is stated as follows :

"6.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, Madras, with a apprehension that the encroachments in the above Highway land will be demolished without insisting any notice to the writ petitioner.

7.The encroachments on the Highway portion will be removed under the Sec.28(2)(ii) of Tamil Nadu Highways Act, 2001. The action of eviction of the encroachments will be taken only according to provisions and rules of the law in force. Hence the contentions of the writ petitioner are not true and not maintainable."

4.As per the counter affidavit, the respondents state that there were encroachments and for the purpose of expansion of Highways, the authorities competent invoked the provisions of the Tamil Nadu Highways Act, 2001, for removal of encroachments. As far as the present case is concerned, the Highways authorities were marking the boundaries. Therefore, the petitioner cannot trace any objection in respect of such markings made by the competent authorities of the Highways Department.

5.The Highways authorities, only after marking the boundaries, may form an opinion whether there are encroachments or not. Only if encroachments are identified, then alone, the Highways authorities would invoke the provisions of the Act and remove the encroachments. Thus, marking of the boundaries by the competent authorities cannot be prevented. They are conferred with the statutory powers to mark the boundaries for the purpose of implementing the public schemes. This being the nature of the dispute raised, the relief as such sought for in the present writ petition cannot be granted.

Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//



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To

1.The Principal Secretary to Government,
Government of Tamil Nadu,
Highways and Minor Ports Department,
Fort St. George, Madras 600 009.

2.The Assistant Divisional Engineer,
Highways Department,
Government of Tamil Nadu,
Nandanam, Madras.

+1cc to Mr.V.Raghavachari, Advocate SR.No.55593
+1cc to Government Pleader SR.No.56209

W.P.No.33805 of 2013

SS(CO)
SB(12/11/2021)