

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

O.S.A. No. 172 of 2020

and

C.M.P. No. 8762 of 2020

R.Jothikrishnan ... Appellant

Vs

1. State of Tamil Nadu
Represented by its
Secretary to Government
Highways and Minor Ports Department
Fort St. George
Chennai - 600 009.
 2. The District Collector
Chennai District
Chennai.
 3. The Special Tahsildar
Aminjikarai Division
Chennai District
Chennai - 600 029.
 4. The Divisional Engineer (Highways)
Chennai Metropolitan City Development Project
Division IV
Chennai - 600 016.
 5. The Divisional Engineer (Highways)
Construction and Maintenance
Chennai City Major Roads SH -2
Chennai - 600 015.
 6. The Assistant Divisional Engineer
State Highways Construction and Maintenance
Highway Roads Sub-Division
Chennai City Major Roads SH-2
Chennai - 600 015.
- ... Respondents

Original Side Appeal filed under Order XXXVI Rule 1 of the
Original Side Rules read with Clause 15 of the Letters Patent,

praying to set aside the order dated 19.03.2020 in O.A. No. 15 of 2020 in C.S. No. 13 of 2020.

Prayer in O.A.No.15 of 2020

Application filed Order XIV Rule 8 O.S.Rules Read with Order XXXIX Rule 1 & 2 of CPC., pleaded to grant an order of injunction restraining the 6th Respondent, his men, agent, servant etc from interfering with the petitioner's peaceful possession and enjoyment of the suit schedule property in any manner pending disposal of the above suit.

Prayer in C.S.No.13 of 2020

Plaint filed under Order IV Rule 1 of O.S.Rules read with Order VII R(1) of CPC

(a) for declaration that the plaintiff is the absolute owner of the suit schedule property and

(b) For permanent injunction restraining the defendants, his men, agents, servants etc from intergering with the peaceful possession and enjoyment of the suit property by the plaintiff.

(c) For directing the defendant to pay the cost of the suit.

For Appellant : Mr. R.Subramanian

For Respondents : Mr. Y.T.Aravindh Gosh (For R1 to R6)
Additional Government Pleader (CS)

J U D G M E N T

(Judgment of the court was made by N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conference".

2.This Appeal has been filed by the Appellant against the dismissal of the Application in O.A. No. 15 of 2020 filed by the Appellant seeking injunction restraining the Sixth Respondent therein from interfering with the Appellant's peaceful possession and enjoyment of the suit property in any manner.

3.Heard Mr. R.Subramanian, Learned Counsel for the Appellant and Mr. Y.T.Aravindh Gosh, Learned Additional Government Pleader (C.S.) appearing for the Respondents.

4.This suit has been filed by the Appellant seeking declaration that the Plaintiff is the absolute owner of the suit schedule property and for permanent injunction restraining the Defendants from interfering with the peaceful possession and enjoyment of the suit property by the Appellant/Plaintiff, as

the property had been purchased by ancestors of the Appellant, vide a registered Sale-deed in Document No. 2263 of 1973 on 25.06.1973.

5. Since the Sixth Respondent, viz., Assistant Divisional Engineer, State Highways Construction and Maintenance, Highway Roads, City Major Roads, SH-2, Chennai - 600 015 issued a notice dated 14.10.2019 alleging that the Appellant has encroached upon the public property and put up construction, a suit has been filed. In the said suit, Application in O.A. No. 15 of 2020 has been filed seeking injunction and the same was dismissed by the Learned Single Judge, against which the present Appeal has been filed.

6. When the matter is taken up today, without prejudice to the rights of the parties, the Appellant is ready to hand over 1420 square feet, which is needed by the Government for the purpose of putting up over bridge in the public interest, for easing out traffic congestion, provided the Respondents-Government deposits the value of the land, viz., to an extent of 1420 square feet and also the super structure put up thereon.

7. Mr. Y.T. Aravindh Gosh, Learned Additional Government Pleader (C.S.) appearing for the Respondents would submit that the Government would strenuously object such a proposal as the Appellant is only an encroacher and he is not having any title over the property as stated by him. Hence, he is not entitled to such deposit.

8. Taking into consideration of the traffic congestion in the particular area and to facilitate the ongoing construction of over bridge, it is appropriate to direct the Appellant to hand over possession of the land measuring about 1420 square feet, which according to the Appellant is in T.S. No. 21 in Block No. 43 and which according to the Respondents-Government in T.S. No. 27 in Block No. 42 and the Respondents - Government to deposit the guideline value of the said land as well as super-structure thereon.

9. It is represented by the Learned Additional Government Pleader (C.S.) appearing for the Respondents that guideline value per square foot is Rs.8040/- and therefore, value of the land of an extent of 1420 square feet is $1420 \times 8040 = \text{Rs.}1,14,16,800/-$. The value of the super structure as determined by the Government is Rs.14,10,828/-.

10. However, Rs.14,10,828/- determined towards value of the super structure thereon is only to an extent of 732 square feet. Since, this Court directed the Appellant to hand over possession of entire extent of 1420 square feet along with super structure, the value of the superstructure as determined will

not reflect for the entire land. Therefore, this Court approximately, determines the value of the super structure for the extent of 1420 square feet of land at Rs.25,00,000/- for the time being.

11. The above said direction is necessary to implement the public infrastructure exercise so that the public would not be put to unnecessary hardship because of non-construction of over-bridge and the construction would not be delayed. Only to safe guard the interest of the Appellant, the Respondent-Government and the general public, in particular, this order has become necessary.

12. Therefore, this Court directs the Respondents -Government to deposit Rs.1,14,16,800/- towards value of the land viz., 1420 square feet and Rs.25,00,000/- towards value of the super structure thereon as expeditiously as possible in an interest fetching fixed deposit in any one of the Nationalized Banks in Chennai City in the name of the Registrar-General of this Court initially for a period of one year and renewable automatically for the same period from time to time till the disposal of the suit and the original receipt shall be handed over to the Registrar-General of this Court under written acknowledgment.

13. It is made clear that the above said order is passed without prejudice to the rights of the parties, only to safeguard the interest of both parties, viz., Appellant, the Respondents-Government as well as general public. Further, it is made clear that once, the Appellant hands over the portion of the property, viz., 1420 square feet, the Respondents-Government shall not interfere with the balance extent of the suit property, till the disposal of the suit. Since the Suit is pending with the Learned Master, it shall be incumbent upon the Learned Master to have at least one effective hearing every week showing progress of the case.

14. Accordingly, this Original Side Appeal is disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

maya/ay

To

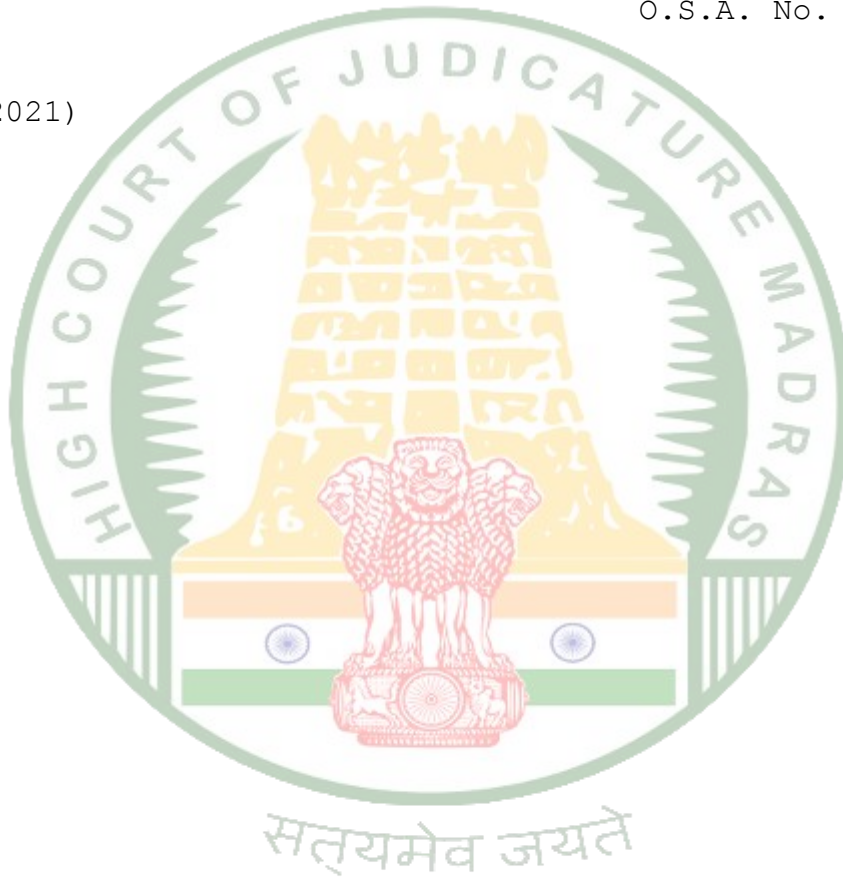
The Sub Assistant Registrar,
Original Side Section,
High Court of Madras,
Chennai.

+2cc to Mr.R.Subramanian, Advocate, S.R.No.16460

+1cc to the Special Government Pleader, S.R.No.16078

O.S.A. No. 172 of 2020

GJ(CO)
KM(17/04/2021)



WEB COPY