



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02-12-2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP Nos.21869, 21879 and 21884 of 2014
And
MP Nos.1, 1, 1, 2, 2 and 2 of 2014

Valliammal	..	Petitioner No.1 in WP 21869/2014
Arunachalamsapathy	..	Petitioner No.2 in WP 21869/2014
Kamalasekar	..	Petitioner No.1 in WP 21879/2014
Ramani	..	Petitioner No.2 in WP 21879/2014
John	..	Petitioner No.1 in WP 21884/2014
Rani	..	Petitioner No.2 in WP 21884/2014

vs.

The Chief Engineer,
National Highways,
Chennai-5

..R-1 in all WPs

The Assistant Divisional Engineer
(Highways) C&M,
Chengalpattu.

..R-2 in all WPs

WP 21869 of 2014 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in proceedings No.Nil dated 27.12.2013 on the file of the second respondent and quash the same as illegal, incompetent and unconstitutional and further direct the respondents, their men, agents and any other person not to interfere the property bearing S.No.59/1, and S.No.59/1D1 situate at Mamallapuram Village, Thirukalikundram Taluk, Kancheepuram District.

WP 21879 of 2014 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in proceedings No.Nil dated 27.12.2013 on the file of the second respondent and



quash the same as illegal, incompetent and unconstitutional and further direct the respondents, their men, agents and any other person not to interfere the property bearing S.No.82/1A3D/3A3, situate at Mamallapuram Village, Thirukalikundram Taluk, Kancheepuram District.

WP 21884 of 2014 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in proceedings No.Nil dated 27.12.2013 on the file of the second respondent and quash the same as illegal, incompetent and unconstitutional and further direct the respondents, their men, agents and any other person not to interfere the property bearing S.No.82/1A3D/3A2 and S.No.82/1A3D/3A3, situate at Mamallapuram Village, Thirukalikundram Taluk, Kancheepuram District.

For Petitioner in all WPs : Mr.M.Kamalanathan

For Respondents in all WPs: Mr.M.Rajendran,
Additional Government Pleader.

C O M M O N O R D E R

The notices issued under Sections 27 and 28 of the Tamil Nadu Highways Act, 2001 [hereinafter referred to as the 'Act', in short], are under challenge in these writ petitions.

2. The petitioners state that they are the absolute owners of their respective portion of the land, which is sought to be taken away by the respondent-Highways Authority.

3. The learned counsel appearing on behalf of the petitioners states that the petitioners have purchased the subject land for a valuable consideration and in peaceful possession and enjoyment of the same. Pattas were also issued in their names and in those circumstances, the Highways Authorities issued notices and made an attempt to interfere with the possession of the property of the petitioners. Thus, the petitioners are constrained to move the abovesaid writ petitions.

4. Perusal of the notices impugned reveal that East Coast Road Expansion Project was sanctioned by the Government of Tamil Nadu and while implementing the said Project, the Highways Authorities measured the land and identified the encroachments and under those circumstances notices were issued for eviction of encroachers and to implement the Road Widening Project. The notices further state that the petitioners have to vacate the premises within seven days and the compensation will be paid to the petitioners.



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5. As far as the provisions of the Tamil Nadu Highways Act, 2001, is concerned, Section 27 provides 'power to cancel permission', if any granted. Section 28 deals with 'prevention of encroachment' and the same read as under:-

"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 Act, after issuing a show cause notice against such removal, returnable within a period of seven days from the date of receipt thereof:

Provided that any representation received within the time limit shall be considered by the authority or officer concerned before passing final orders."

6. Section 29 of the Act, provides 'recovery of cost of removal of encroachment'.

7. Section 28 of the Act, is unambiguous that the Highways Authorities or any person authorised by it on this behalf shall remove the encroachments without any notice. This being the scope of the provisions of the Act, in these cases, notices have been issued to the petitioners for clearing the encroachments.

8. The petitioners state that they have not encroached upon the Highways land and they are the owners of the land. If at all the petitioners are possessing the documents to establish the same, it is to be established before the Competent Authority by submitting all the documents. Even in case of dispute regarding ownership or title, the Highways Authorities cannot conclude the



same, as they have no power to decide the title or ownership of a person in respect of an immovable property.

9. Thus, the petitioners are at liberty to submit the documents and if the Authorities are convinced with the documents, then they can initiate appropriate acquisition proceedings for the purpose of implementing the Road Widening Project. In the event of any doubt in respect of documents to be produced by the petitioners, then it is for the petitioners to approach the Competent Civil Court of Law for the purpose of establishing their title or ownership.

10. This being the procedures to be followed in response to the notices impugned, the petitioners are at liberty to submit their documents and if they possess documents, then the Authorities may verify the same and initiate all appropriate actions by following the procedures as contemplated.

11. However, the notices cannot be set aside, as it is in accordance with Sections 27 and 28 of the Tamil Nadu Highways Act, 2001 and implementation of Road Widening Project is of paramount importance in the interest of public as the East Coast Road is facing traffic congestions. Due to over crowding, Widening Projects at no circumstances be delayed and such a delay would cause greater hardships to the road users and for vehicular traffic. Thus, the public interest should prevail and all such claims sanctioned by the Government must be implemented within the time limit contemplated.

12. This being the principles to be followed, the petitioners are at liberty to submit their documents and the respondents shall look into the documents submitted by the petitioners and take a decision and proceed in accordance with law as expeditiously as possible.

13. With the abovesaid liberty, all the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Svn



To

1.The Chief Engineer,
National Highways,
Chennai-5

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2.The Assistant Divisional Engineer
(Highways) C&M,
Chengalpattu.

+3 ccs to Mr.M.Kamalanathan, Advocate Sr.NO. 63285,63286,63287
+1 cc to Government Pleader Sr.NO. 63815

WP.Nos.21869,21879& 21884
of 2014

NRL (CO)
A.SK(13.12.2021)