



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.13930 of 2014

and

M.P.No.1 of 2014

K.Deivanayagi Ammal

...Petitioner

Vs

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

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

...

Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in the 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 for bearing the respondents, their men, agents and servants from interfering with the petitioner's holdings at S.No.82, situated at village No.156, Mamallapuram Township, Kancheepuram District.

For Petitioner :Mr.Sunny

For M/s.Srimathi

For Respondents:Mr.K.M.D.Muhilan

Government Advocate

For R1 and R2

ORDER

The notice dated 27.12.2013 issued by the second respondent is under challenge in the present writ petition.

2. The petitioner states that his property is located at the Highway leading Chennai to Mamallapuram via Kovalam. The property is on the western side of the road. The petitioner purchased the said subject property for a valuable consideration on 25.08.1988 and 27.03.1990. Patta was also transferred in the



name of the petitioner. Under these circumstances, the second respondent/The Assistant Divisional Engineer (Highways) C & M, Chengalpattu, issued the impugned notice under Section 28 of the Tamil Nadu Highways Act, 2001, [hereinafter referred to as the Highways Act] stating that the petitioner is an encroacher, he is liable to be evicted from the subject property.

3. The petitioner has filed the writ petition mainly on the ground that the notice was not properly addressed to the petitioner nor communicated in a proper manner. Secondly, the Assistant Divisional Engineer, (Highways) C & M, Chengalpattu, is not a competent authority to issue such a notice and on that ground also, the impugned order is liable to be set aside.

4. As far as the competency of the second respondent / Assistant Divisional Engineer (Highways) C & M, Chengalpattu, is concerned, it is relevant to consider Section 28(2) of the Tamil Nadu Highways Act, 2001. Section 28 of the Highways Act enumerates "Prevention of encroachment". Section 28(1) stipulates 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.

5. Section 28(2) of the Highways Act contemplates the The Highways authority or any person authorised by it in this behalf, may --

(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.

6. In view of the above provision, it is clear the Highways authority or any other person authorised by such highway authority is empowered to issue notice. The highway authority in the present case is the Divisional Engineer. The Divisional Engineer authorised the Assistant Divisional Engineer, Highways, to issue notice and remove the encroachments by invoking the provisions of Section 28 of the Highways Act. Thus, the point of jurisdiction raised by the petitioner fails and the action initiated by the Assistant Divisional Engineer (Highways), for the purpose of invoking Section 28 of the Highways Act is well within the powers as contemplated under the provision and there is no infirmity as such.

7. Regarding the other grounds raised that the impugned notice has not been addressed to the petitioner, the impugned notice, which is enclosed at Page No.40 of the typed set of



papers filed along with the writ petition reveals that the address of the petitioner has not been stated at all. In other words, the notice impugned was properly communicated to the petitioner or not, is not established before this Court. In the bottom of the impugned notice, even the addressee name and address is missing.

8. Therefore, this Court is of the opinion that the notice has not been properly addressed and therefore, a doubt arises, whether the copy of the notice was properly communicated in the manner known to law or not. In view of the fact that the impugned order does not contain the addressee's name and address, the revised notice is to be served on the petitioner.

9. The learned Government counsel appearing on behalf of the respondent / Department, on instructions from Mr.A.Chandrasekaran, Assistant Divisional Engineer, Highways Department, Chengalpattu, who is present before this Court today and made a submission that the subject land was already acquired by the Government by initiating land acquisition proceedings in the year 1993 itself. The declaration was published on 29.04.1993. The acquisition proceedings were completed in entirety and the compensation was kept in the Revenue Deposit. Thus, now the land belongs to the Government and therefore for all purposes, the petitioner is an encroacher. In view of the fact that the acquisition proceedings were completed and the Government took over the property, the encroachers are to be removed for the purpose of development of highways, more specifically, in ECR road from Chennai to Mamallapuram (SH49). In view of the encroachments, the Department is unable to complete the road widening projects and therefore the writ petition is liable to be rejected.

10. This Court is of the considered opinion that the subject properties had already been acquired and the compensation was deposited. Therefore, the petitioner has no right to claim ownership in respect of the subject property. However, the impugned notice issued under Section 28 of the Highways Act is not properly addressed nor communicated in the manner known to law.

11. In this view of the matter, the impugned notice dated 27.12.2013 is quashed. The respondents are directed to issue a fresh notice to the petitioner in accordance with the provisions of the Act and thereafter proceed with the eviction of encroachments.

12. It is made clear that the lands were acquired in the year 1993 for expansion of ECR road, more specifically, from Chennai to Mamallapuram. Till today, the processes are going on



and it is unfortunate that the authorities are not initiating action in an effective manner. In such road expansion projects, eviction of encroachments must be made in a swift manner and by following the procedures as contemplated. The delay causes greater inconvenience to the public in general and as Chennai to Mamallapuram road is already a busy road, expansion is imminent and any further delay in development of road projects would cause further inconvenience to the road users and the public at large.

13. Thus the authorities competent / respondents are directed to remove all such encroachments in ECR road and complete the road widening projects in public interest as expeditiously as possible and by following the procedures.

14. Accordingly the writ petition stands allowed and the respondents are directed to issue fresh notice to the petitioner within a period of one week from the dated of receipt of the copy of this order and proceed in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

nti/kak

To

1. The Chief Engineer,
National Highways, Chennai- 5.
2. The Assistant Divisional Engineer (Highways) C & M,
Chengalpattu.

+1cc to the Government Pleader, S.R.No.55109

W.P.No.13930 of 2014

KV(CO)
CB(02/11/2021)