

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.01.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.20320 of 2020

and W.M.P.Nos.25110 & 25112 of 2020

Kamalakannan .. Petitioner

Versus

- 1.The District Collector,  
Salem, Salem District.
- 2.The Revenue Divisional Officer,  
Mettur Town and Taluk, Salem District.
- 3.The Thasildar,  
Taluk Office, Mettur Town and Taluk,  
Salem District.
- 4.Assistant Divisional Engineer C&M  
State Highways Department,  
Omalur, Salem District. .. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records in impugned eviction notice dated 19.11.2020 on the file of the 4<sup>th</sup> respondent and quash the same.

For Petitioner : Mr.R.Sankarasubbu

For R1 to R4 : Mr.V.Jayaprakash Narayanan  
Government Pleader

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J. through video conferencing]

The petitioner in the affidavit filed in support of this Writ Petition would aver among other things that his ancestors, by way of succession, are in possession of certain

extent of land in S.F.No.247/1A of Mecheri Village, Mettur Taluk and statutory levies have also been levied. The father of the petitioner, on an earlier occasion, filed O.S.No.19 of 2013, on the file of the Court of District Munsif, Mettur, against the Collector of Salem District, the Tahsildar, Mettur, and the Executive Officer, Selection Grade Town Panchayat, Mecheri, Mettur Taluk, for permanent injunction restraining the defendants, their men and subordinates from in any manner disturbing the plaintiff's peaceful possession and enjoyment of the suit property, either by evicting him from the property by using force or by any other means and awarding cost of the Suit and the Suit came to be decreed on 09.11.2018, for permanent injunction restraining the defendants from disturbing the plaintiff's peaceful possession and enjoyment of the Suit Property, admeasuring an extent of 6 cents of land in S.F.No.247/1A with a tiled house bearing Door No.13-2-39 along with pathway rights and easementary rights etc., except by following due process of law.

2. The primordial submission made by the learned counsel appearing for the petitioner is that without taking note of the said decree and without due and proper application of mind, the 4<sup>th</sup> respondent has issued the impugned notice by invoking Section 28(2)(ii) of the Tamil Nadu Highway Act, 2001 and prays for appropriate orders.

3. Mr.V.Jayaprakash Narayan, learned Government Pleader accepts notice on behalf of the respondents 1 to 4 and would submit that the petitioner has filed W.P.No.14487 of 2020, against the respondents 1 to 3 praying for issuance of patta in respect of the land in question and the same came to be dismissed on 12.10.2020 and since due process of law has been followed, in the light of the above said decree, the petitioner is not expected to make any grievance and prays for dismissal of this Writ Petition.

4. This Court has carefully considered the rival submissions and also perused the materials placed before it.

5. It is relevant to extract Section 28 of the Tamil Nadu Highways Act, 2001:

"Section 28: Prevention of encroachment:

28(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. In the light of the proviso to Section 28 of the Tamil Nadu Highway Act, 2001, the petitioner is at liberty to submit his detailed representation by enclosing relevant and authenticated documents to the 4<sup>th</sup> respondent within a period of three weeks from the date of receipt of a copy of this order / uploading of the order in the website and upon receipt of the same, the 4<sup>th</sup> respondent is directed to put Mr.K.Chinnasamy / petitioner in W.P.No.16720 of 2019 on notice and thereafter shall consider the same in accordance with law and pass orders within a further period of three weeks thereafter and till such time, shall defer further decision in terms of the said impugned notice. It is also made clear that the petitioner till the disposal of the representation by the 4<sup>th</sup> respondent, shall not create any third party right in respect of land and superstructure in question.

7. The Writ Petition is disposed of with the above observations. No costs. Consequently connected miscellaneous petitions are closed.

Call on 01.04.2021 for filing Status Report and post Cont.P.No.618 of 2020, along with this Writ Petition.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,  
Salem, Salem District.

<https://hcservices.ecourts.gov.in/hcservices/>

2.The Revenue Divisional Officer,  
Mettur Town and Taluk, Salem District.

3.The Thasildar,  
Taluk Office, Mettur Town and Taluk,  
Salem District.

4.Assistant Divisional Engineer C&M  
State Highways Department,  
Omalur, Salem District.

5.The Sub Assistant Registrar  
original Side  
High Court, Madras-104

+1cc to Mr.R. SANKARASUBBU,Advocate, S.R.No.2872  
+1cc to the Government Pleader, S.R.No.2256

VSN.11 (CO)  
SM (08/02/2021)  
aa11/02/2021

WP.No.20320 of 2020



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