



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2021

CORAM:

**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND**

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P. (MD)No.19722 of 2020

and

W.M.P. (MD)No.16446 of 2020

Gunasekaran

: Petitioner

Vs.

1.The District Collector,
Theni District,
Theni.

2.The Tahsildar,
Andipatti,
Theni District.

3.The Divisional Engineer,
Highways Department,
Construction & Maintenance,
Theni District.

4.The Assistant Divisional Engineer,
Highways Department,
Construction & Maintenance,
Kadamalaigundu, Andipatti,
Theni District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records relating to the impugned notice issued by the 4th respondent in Ku.No.1/2020/A2, dated 09.12.2020 and quash the same as illegal and forbearing the respondents from in any manner proceeding to demolish a portion of the property comprised in S.No.1614/9 situated at Subbiahnaicker Street, Kadamalaigundu, Andipatti Taluk, Theni District, without following the provisions of the Tamil Nadu Panchayats Act, 1994 and Tamil Nadu Land Encroachment Act.

For Petitioner : Mr.K.Kevinkaran

For Respondents : Mr.K.Mu.Muthu
Additional Government Pleader



ORDER

(Order of the Court was made by **M.M.SUNDRESH, J.**)

This is a second round of litigation. Earlier a writ petition was filed in W.P.(MD)No.22449 of 2018, wherein, this Court passed the following order:

"4. Be that as it may, since the eviction notice has been issued, without issuance of any prior notice to the petitioner, both the petitioner as well as the respondents are directed to treat the impugned proceedings dated 01.10.2018 as a show cause notice, calling upon the petitioner to submit his explanation and the petitioner is given two weeks time to submit his explanation from today and on receipt of the explanation / objection from the petitioner, if any, the fourth respondent shall consider and pass appropriate orders."

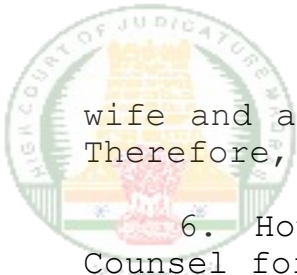
In compliance of the aforesaid order, the impugned notice was issued on 09.12.2020, wherein, it was found that the petitioner has encroached upon the highway road and was asked to remove the same.

2. The learned Counsel appearing for the petitioner submitted that the representation of the petitioner, given after the filing of this writ petition, may be directed to be considered.

3. However, the learned Additional Government Pleader appearing for the respondents submitted that the petitioner was put on notice and he was present at the time of taking measurements. The learned Additional Government Pleader has also filed a typed set of papers enclosing a copy of the notice received by the petitioner's wife and photographs showing that the petitioner was present at the time of taking measurements. Therefore, he prays that the writ petition will have to be dismissed.

4. We do not find any merit in this writ petition. The encroachment was found after issuance of notice to the petitioner. The fact that the petitioner's wife received the notice is not in dispute. The petitioner was also present at the time of taking measurements, as seen from the photographs produced by the learned Additional Government Pleader and the measurements were also taken in his presence. The second respondent has also sent a letter to the fourth respondent about the classification of the land, which is a Government Poromboke (Road). Thus, we have no doubt in our mind that the petitioner has encroached the government land.

5. In the impugned notice, the petitioner was given one more opportunity to remove the encroached portion, as the remaining portion, admittedly, belongs to him. It has been further stated that on his failure, the same will be removed by the fourth respondent. The petitioner was quite aware of the proceedings. Only after the filing of this writ petition, hurriedly, a representation has been made and that too, after the receipt of the earlier notice by his



wife and after being physically present at the time of measurement. Therefore, this Court is not inclined to give any more indulgence.

6. However, in view of the submission made by the learned Counsel for the petitioner, two months time from the date of receipt of a copy of this order is granted to the petitioner to remove and hand over the encroached portion.

7. With the above observation and direction, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gk

To

1.The District Collector,
Theni District, Theni.

2.The Tahsildar,
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Theni District.

3.The Divisional Engineer,
Highways Department,
Construction & Maintenance,
Theni District.

4.The Assistant Divisional Engineer,
Highways Department,
Construction & Maintenance,
Kadamalaigundu, Andipatti,
Theni District.

+1 CC to SGP (SR-635[F] dated 08/01/2021)

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