



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.12.2021

CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
AND

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

W.P (MD) NO. 21601 OF 2021

and

W.M.P (MD) No. 18158 of 2021

WEB COPY

Radha

: Petitioner

.vs.

The Assistant Divisional Engineer,
National Highways,
Theni.

: Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings issued by the respondent vide Na.Ka.No.130/2021/Vu, dated 20.11.2021 and to quash the same and consequently to restrain the respondent from in any manner interfering with the peaceful possession and enjoyment of the Petitioner's residence in respect of their property situated at Gandhiji Road, Madurai Main Road, Theni.

For Petitioner

: Mr. B. Saravanan

for Mr. C. Jegannathan

For Respondent

: Mr. P. Subburaj

Special Govt. Pleader

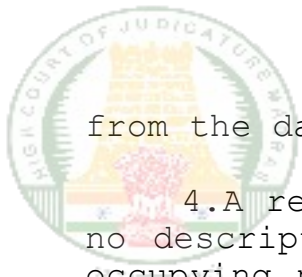
O R D E R

(Order of the Court was made by PUSHPA SATHYNARAYANA, J)

This Writ Petition is filed seeking to quash the impugned proceedings issued by the respondent vide Na.Ka.No.130/2021/Vu, dated 20.11.2021 and consequently to restrain the respondent from in any manner interfering with the peaceful possession and enjoyment of the Petitioner's residence in respect of their property situated at Gandhiji Road, Madurai Main Road, Theni.

2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. The Petitioner is alleged to be one of the 146 encroachers on the Madurai-Kochin Highway Road at 76/2 KM on the right side, Theni Division. Hence the respondent has issued a notice of eviction, dated 20.11.2021, calling upon them to remove the encroachment and vacate the vacant possession within seven days



from the date of receipt of the above notice.

4.A reading of the impugned order says that there is absolutely no description of the property which the encroachers are allegedly occupying namely, the extent, survey number and description of the encroachment made by them etc. So far as the present Writ Petition is concerned, we say that hardly one cent of land, in which, the Petitioner herein has put up a thatched house and living there. Even presuming that they should be evicted, proper notice should be given to them and after giving them an audience and their objections, the order could have been passed. The impugned order in original filed also is addressed originally to one Sakthivel, son of Chinna Ramar, Madurai Main Road, Theni, which is scored out and the Petitioner's name has been written in ink. From the above, it is very evident that the authorities have issued this notice to all the 146 encroachers, without even surveying or measuring the property, in a stereo-typed notice.

5.It also appears that the work has been awarded to the Contractor and just to facilitate him, these kind of notices have been given. As the notice issued to the Petitioner is not in the manner known to law, we are inclined to set aside the same. It is open to the authorities concerned to issue appropriate notice to the Petitioner and others, if they are encroachers, after surveying and measuring the land and giving them an opportunity of hearing and then to pass appropriate orders.

6.The Petitioner also, who is certainly an encroacher, though has been living there for few decades, unless establishes her right or title, may have to vacate the place and cannot survive only by the order of the Courts.

7.In the light of the above facts, the order impugned herein, dated 20.11.2021 issued by the respondent is set aside and the respondent is at liberty to issue fresh notice to the Petitioner, conduct an enquiry and pass appropriate orders, after affording her an opportunity of hearing, on merits and in accordance with law.

8.With the above directions, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

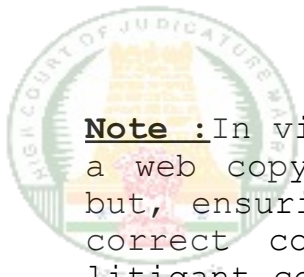
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/ /2021

Sub Assistant Registrar(CS)

vsn

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



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

WEB COPY

To

The Assistant Divisional Engineer,
National Highways,
Theni.

+1 CC to M/s.SPL GP (SR-37758[F] dated 08/12/2021)

W.P (MD) NO.21601 OF 2021
and

W.M.P (MD) No.18158 of 2021
07.12.2021

VSN(CO)

KB(21.12.2021) 3P 3C