

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2022

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.30509 of 2002

S.Pugazhendhi

...Petitioner

vs.

1. The Secretary to Government,
Government of Tamil Nadu,
Highways Department,
Fort St. George,
Chennai - 9.
2. The District Collector,
Perambalur District,
Perambalur.
3. The Superintending Engineer,
Highways Department,
Villupuram District,
Villupuram.
4. The Divisional Engineer,
Highways Department,
Ariyalur, Ariyalur District.
5. The Assistant Divisional Engineer,
Office of the Highways Department (Rural),
Veppanthattai,
Perambalur District.
6. The Junior Engineer,
Office of the Highways Department (Rural),
Veppanthattai,
Perambalur District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the second respondent in his proceedings No.Na.Ka.No.A1/8551/2002 dated 5.6.2002 and quash the same, and direct the respondents to compensate the petitioner adequately by paying liquid cash of

Rs.6.50 Lakhs for the demolition of the building by the respondent in Old Survey No.121/4, New Survey No.491/11 in V.Kalathur Village, Veppanthattai Taluk, Perambalur District.

For Petitioner : Mr.Chella Pandian

For Respondents : Mr.G.Krishna Raja
Additional Government Pleader

Mr.S.Mahesh
for Advocate Commissioner

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the second respondent in his proceedings No.Na.Ka.No.A1/8551/2002 dated 5.6.2002 and quash the same, and consequently direct the respondents to compensate the petitioner adequately by paying liquid cash of Rs.6.50 Lakhs for the demolition of the building by the respondent in Old Survey No.121/4, New Survey No.491/11 in V.Kalathur Village, Veppanthattai Taluk, Perambalur District.

2. The case of the petitioner is that originally the subject property belongs to petitioner's grandmother namely Ponnammal and after her demise, a portion of the subject property measuring an extent of 1890 sq. ft. was allotted in favour of the petitioner's father, namely V.Selvaraj vide, registered partition deed entered into between the legal heirs of said Ponnammal, in which a portion of land was acquired by the National Highways in the year 1976. Thereafter, the petitioner's father constructed a house in the remaining portion of the land. After his demise, petitioner and other legal heirs of said V.Selvaraj entered into partition and petitioner was allotted with land measuring an extent of 590 sq.ft. While so, the petitioner let out the above said land for textile shop. As there was a 3 feet encroachment in the petitioner's property, the Highways Department (Rural) in order to widen the road acquired the petitioner's property and demolished the entire building. Thereafter, the petitioner filed a Writ Petition in W.P.No.8123 of 2002 seeking for compensation for the loss sustained by the petitioner. This Court, vide order dated 13.03.2002, directed the District Collector / 2nd respondent therein, to consider the petitioner's representation and pass order on the same within a period of eight weeks. Pursuant to which, the District Collector passed an impugned order dated 05.06.2002, stating that the petitioner constructed the said land without any planning approval from the local authority.

Challenging, the said impugned order dated 05.06.2002, the petitioner has filed the present Writ Petition seeking the aforesaid relief.

3. Learned counsel for the petitioner submitted that the petitioner filed W.M.P.No.44682 of 2002 before this Court, for appointment of Advocate Commissioner to ascertain the damage caused to the petitioner for payment of compensation. This Court vide order dated 10.09.2003, appointed Mr.S.Mahesh, as Advocate Commissioner and issued a warrant and fixed the date of inspection after issuing notice to the respondents and parties with the aid of the local surveyor to inspect the subject property in the presence of the parties to find out the following:

a) Whether the building constructed by the petitioner has approved plan.

b) Whether the building has been constructed in the petitioner's land or Government land.

c) Whether any portion of the building has been constructed by the petitioner in his own land has been demolished and if so what is the actual damage in terms of money.

He further submitted that, the Advocate Commissioner, after inspecting the subject property filed a report stating that the entire fault is with the Highways Department and the entire building of the petitioner had been demolished. In order to obtain compensation and to quash the impugned order dated 05.06.2002, the petitioner has filed the present Writ Petition, seeking the aforesaid relief.

4. Learned Additional Government Pleader appearing for the respondents submitted that as there was an encroachment in the year 1976, the petitioner's building was demolished by the Highways Department. Subsequently, in the year 2001, the petitioner encroached the subject property again, while so, the respondents demolished the building and acquired the said land. Further, there is no sanctioned plan approval for the said land available with the petitioner. Accordingly, he prayed for dismissal of this Writ Petition.

5. Heard the arguments advanced on either side and perused the materials placed on record.

6. The whole genesis of the case pertains to the plan approval for the building which according to the respondents is not available. The said issue being a disputed question of fact, to redress the said grievance, the petitioner has to approach the competent Civil Court by way of seeking compensation for the loss incurred to him for the demolition of the petitioner's property and this Court, cannot grant any relief in exercising

of its jurisdiction under Article 226 of the Constitution of India.

7. In view of the above, this Writ Petition is dismissed, with liberty to the petitioner to file appropriate suit before the competent Civil Court. No costs.

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

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To

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+1cc to M/s.C.S.Associates, Advocate Sr.36520
+1cc to the Government Pleader Sr.37192

W.P.No.30509 of 2002

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srg 08/07/2022