



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.05.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MRS. JUSTICE S. ANANTHI

W.P. No. 12021 of 2022
and
W.M.P. No. 11439 of 2022

Rathinasamy

.. Petitioner

Versus

1.The District Collector,
Office of the Collectorate,
Cuddalore.

2.The Assistant Engineer,
(Construction and Maintenance),
Highways Department,
Chidambaram.

3.Jeeva

..Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 12.04.2022 of the 2nd respondent to quash the same and direct the 2nd respondent to consider the petitioner's representation dated 20.04.2022 and 29.04.2022 to conduct fair physical hearing and to pass such further order(s) this Hon'ble Court may deem fit and proper on the circumstances of the case.

For Petitioner : Mr. T. Annamalai
For Respondents : Mr. J. Ravindran,
Additional Advocate General
assisted by
Mr. A. Selvendran,
Special Government Pleader for R1 & R2

ORDER

(Order of the Court was made by R. MAHADEVAN, J.)

The petitioner has come forward with this writ petition seeking to issue a Writ of Certiorarified Mandamus calling for the records relating to the order dated 12.04.2022 passed by the second respondent, to quash the same and consequently direct the second respondent to consider the petitioner's representations dated 20.04.2022 and 29.04.2022 and to pass orders thereof.



2. It is the case of the petitioner that for more than 40 years, he is running a shop in a small portion of land in Survey No.37. Originally, the land in Survey No.37 was classified as Poromboke land and the same was later on, due to urbanisation, re-classified as Natham land. It is further stated that the adjacent lands in Survey Nos.35 and 36 were classified as 'highways', through which the ingress and egress are made to the land in Survey No.37. While so, the third respondent herein, with an intention to disturb the possession of the petitioner, filed W.P. No. 20014 of 2021 before this Court stating that the petitioner has encroached the highways land and carrying on the business. In the said writ petition, the petitioner herein was arrayed as fifth respondent and this Court, by an order dated 20.09.2021, directed the respondents 1 to 3 therein to conduct an enquiry and to pass order after hearing the parties concerned. Pursuant to the said order, the second respondent/Highways Department issued the impugned notice dated 12.04.2022 directing the petitioner to remove the encroachment. Challenging the said notice dated 12.04.2022, the petitioner has filed this writ petition.

3. The learned counsel for the petitioner submits that even though the petitioner was arrayed as fifth respondent in WP No. 20014 of 2021, he was not heard by this Court. Further, the second respondent herein, on the basis of the order passed in WP No. 20014 of 2021, has not conducted any enquiry as to whether the petitioner is in occupation of the land belonging to the Highways. On the other hand, by the impugned notice dated 12.04.2022, straightaway, the petitioner was directed to remove the alleged encroachment made by him, failing which the so-called encroachments will be removed within seven days. Therefore, the learned counsel prayed for allowing this writ petition by setting aside the notice impugned herein.

4. The learned Additional Advocate General appearing for the respondents 1 and 2 fairly submitted that the respondents 1 and 2 would cause necessary survey of the lands in Survey Nos.36 and 37 and thereafter, take appropriate action, in accordance with law.

5. Heard both sides and perused the materials placed on record.

6. It is seen from the impugned notice dated 12.04.2022 issued by the second respondent that there was no reference that before issuing such notice, the petitioner was provided an opportunity of being heard. On the other hand, the notice dated 12.04.2022 was issued on the basis of the order passed by this Court in WP No. 26441 of 2021. That apart, there was no survey or field inspection conducted to verify whether the petitioner is in occupation of the land belonging to the Highways Department. Such being the actual position and having regard to the admitted fact that what was questioned herein is only a notice, this court taking note of the submissions made by the learned counsel on either side, directs the second respondent to cause a field inspection and/or survey of the lands in



Survey Nos.35, 36 and 37 in the presence of the petitioner, third respondent and any other interested parties, and thereafter, pass appropriate orders, on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order. Till such time, no coercive steps shall be taken by the respondent authorities, against the petitioner.

7. With the aforesaid directions, this writ petition stands disposed of. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Vacation Officer)

//True Copy//

Sub Assistant Registrar

mmi/rsh

To

- 1.The District Collector,
Office of the Collectorate,
Cuddalore.
- 2.The Assistant Engineer,
(Construction and Maintenance),
Highways Department,
Chidambaram.

+1 cc to Mr.T.Annamalai, Advocate Sr.NO. 31080

+1 cc to Government Pleader Sr.NO. 31191

WP No. 12021 of 2022

nrl(CO)

A.SK(25/05/2022)