



W.P.No.13543 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.13543 of 2022

1. Velliyangiri
2. V.Nithyanandan @ Anandhan .. Petitioners

Vs.

1. The District Revenue Officer
O/o. The Erode District Collectorate
Erode.

2. The Divisional Engineer
Highways Department
Gobichettipalayam
Erode District.

3. The Assistant Divisional Engineer
O/o. The Assistant Divisional Engineer Office
Highways Department
Nambiyur, Erode District.

4. The Assistant Engineer
Highways Department
Nambiyur, Erode District. .. Respondents



W.P.No.13543 of 2022

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus to call for the records of the impugned notice dated 06.05.2022 issued in Na.Ka.No.412/2022/ENiVu by the third respondent and quash the same and consequently, forbearing the respondents, their men, agents, servants and subordinates from interfering with the peaceful possession and enjoyment of the petitioner's shop namely "Anand Mutton Stall" situated at survey No.18/2, Pulliyampatti-Nambiyur Main Road, Opposite of Weekly Santhai, Punjai Puliyampatti Road, Nambiyur Village, Erode District - 638 458, except by due process of law.

For the Petitioners : Mr.S.A.Sayed Shuhaibb

For the Respondents : Mr.P.Muthukumar
State Government Pleader

ORDER

(Order of the Court was made by
the Hon'ble Chief Justice)

The writ petition has been filed challenging the notice dated 06.05.2022, by which, the petitioners were directed to remove the encroachment.

2. The challenge has been made mainly on the ground that before causing notice on the petitioners to remove the encroachment within seven days, no show cause notice was given



W.P.No.13543 of 2022

to submit their objection. It is otherwise the case of the petitioners that they have given objection to the notice, but without deciding it, the respondents would take action in the matter. It is also without causing action against the neighbouring plot holders who have also encroached the land of the highway. Thus, the respondents are causing discrimination.

3. Learned Government Pleader submits that notice was caused on the petitioners only after conducting a survey and finding encroachment on the highway land. Therefore, the petitioners, while submitting the objection and even while filing the writ petition, could not place on record any title document to prove their rightful possession of the land to the extent it has been encroached. It is further submitted that action to remove the encroachment would be taken against all the persons who have encroached the highway land and not against the petitioners alone. If anyone wants to peruse the survey report, he/she can visit the office of the respondents within two days and thereupon, action would be taken to remove the encroachments, as, the petitioners have not proved



W.P.No.13543 of 2022

their right in the land in question even in the objection submitted by them.

4. We have considered the rival submissions and perused the records.

5. As far as the notice caused by the respondents directing the petitioners to remove the encroachment within seven days is concerned, it is given without a show cause notice to submit an objection. Yet, the writ petitioners have submitted their objection to the notice which should have been considered. However, now, this Court has invited the petitioners to justify their objection to retain the possession of the portion said to be under encroachment. No plausible explanation is given or any document is produced by the petitioners to prove their title over the land in question.

6. In view of the above, now the matter need not be sent for the post decisional hearing and a satisfactory reply could not be given to maintain the possession to the extent of encroachment.



W.P.No.13543 of 2022

The aforesaid is one part. Otherwise, learned Government Pleader has already stated that action to remove the encroachment would be taken without discrimination and accordingly, we close this writ petition with the following directions:

(i) the petitioners are allowed to peruse the survey report within two days; and

(ii) thereupon, the respondents are directed to remove the encroachment immediately without any discrimination and only to the extent of encroachment of the land, so as to make the highway free from encroachment.

There will be no order as to costs. Consequently, WMP Nos.12741 and 12742 of 2022 are also closed.

(M.N.B., CJ.) (N.M., J.)
05.07.2022

Index : Yes/No

kpl



W.P.No.13543 of 2022

WEB COPY

To:

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W.P.No.13543 of 2022

M.N.BHANDARI, CJ
AND
N.MALA,J.

(kpl)

W.P.No.13543 of 2022

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