



W.P.No.16505 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE TMT. JUSTICE T.V.THAMILSELVI

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- 1.A.Jayaraman
- 2.R.Pakkiri
- 3.P.Anbarasu
- 4.M.R.Chandra Mohan
- 5.R.Selvam
- 6.M.Vanathi
- 7.V.T.R.Santhi.
- 8.K.A.Kuppan
- 9.L.Bhuvaneshwari

.. Petitioners

vs.

- 1.The Government of Tamil Nadu,
Highways Department, No.485, MTB Building,
Anna Salai, Nandanam, Chennai-600 035.
- 2.The Divisional Manager,
Highways Department,
Tiruvallur District, Tiruvallur.
- 3.The Assistant Divisional Engineer,
Highways Department,
Ambattur Divisional, Avadi,
Chennai-600 053.
- 4.The Tahsildar,
Thiruvotriyur,
Chennai-600 019.

.. Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records pertaining to final order No.82/2022/C2 dated 15.06.2022 passed by the 3rd respondent and to quash the same as illegal forthwith.

For Petitioners : Mr.C.Shankar

For Respondents : Mr.P.Muthukumar
State Government Pleader for R1, R4 & R3

ORDER

(Order of the Court was made by D.Krishnakumar, J.)

The petitioners, challenging the impugned proceedings of the third respondent dated 15.06.2022, in and by which the petitioners are directed to vacate from the encroached portions of lands, have filed the instant writ petition.

2. According to the petitioners, they are permanent residents of Mastan Kovil Street, Thiruvottiyur, Chennai-600 019, for the past 4 decades in the houses comprised in Survey Nos.34/1A, 34/2A, 34/1B, situated on the left side of the Ennore Express Highway, Thiruvotriyur Taluk, Chennai and they have formed a nagar in the name and style of “Kamadevan Nagar”. One Tr.K.Murugan, who was appointed as Power Agent in respect of the properties comprised in S.Nos.24/16, 34/1A, 34/1A2, 34/1B1A, 34/2A part, Old Door No.23, New Door No.26, Plot No.22, 23, 24, totally admeasuring



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about 5600 Sq.Ft., at Kaamadevan Nagar, Thiruvottriyur, Chennai, which is situated on the backside of the Mastan Koil Street, had granted access to his property through a vacant land which was used as a park. While that being so, one Thiru K.Murugan had filed a writ petition in W.P.No.19000 of 2018 alleging that the petitioners had encroached upon the Ennore Express Highway and to remove the alleged encroachment over the highway. In pursuant to the interim direction passed by this Court, the third respondent has directed the fourth respondent for joint survey of lands comprised in S.Nos.34/1, 34/2A, 34/1B, in Thiruvottiyur Taluk and after finishing the survey, the fourth respondent has filed a Survey Report dated 27.05.2022 and in pursuance thereof, the third respondent has issued a show cause notice dated 03.06.2022 under Section 28(2) of the Highways Act and directed all the petitioners to submit their explanation in respect of the alleged encroachment, within seven days from the date of receipt of the show cause notice.

3. According to the petitioners, in pursuant to the show cause notice dated 03.06.2022, the petitioners have submitted their detailed reply to the third respondent dated 09.06.2022, however, without considering the same,



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the third respondent has passed the impugned order dated 15.06.2022, directing the petitioners to vacate from the encroached lands in the aforesaid survey numbers. According to the petitioners, the petitioners are owners of the properties in the aforesaid survey numbers and they are in possession and enjoyment of the same for more than 4 decades and they submitted their objections to the show cause notice to the authorities concerned along with supporting documents, but without appreciating the same, the third respondent has passed the impugned order and therefore, they have filed the instant writ petition.

4. The learned counsel for the petitioners has drawn the attention of this Court to the patta granted in favour of one K.A. Kuppan / 8th petitioner herein in respect of Survey Nos.34/1A1 part, 34/1A1, 34/1A2, 34/1B1, 34/A3, 34/1B1B admeasuring 0.0323.0 Sq.meters and therefore submitted that the petitioners are the legal owners of the properties situated in the aforesaid survey numbers, which are under dispute in the present writ petition, however, the said aspect has not been considered by the respondents and therefore, prays for appropriate orders.



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5. The fifth respondent has filed a Status Report stating that the Tahsildar, Thiruvotirur, in his report in Na.ka.No.B1/005/2022 dated 27.05.2022, stated that around 1.69.26 Hectares, comprised in Old S.Nos.34/1A, 2A, 1A1B & 35/1, 34/2B, 34/1B2 and new Town Survey No.25, Block-5, Ward no.1, Ennore Revenue Village, Thiruvotriyur is classified as Circar Road in Urban Land Record and mentioned as Circar Poromboke in village records, out of which around 18933 Sq.Ft., fall on road widening alignment, which has been encroached by individuals, shops, mosques etc. The officials of the fifth respondent, along with Taluk Officials and Police, had inspected the site at K.M. 8/0 to 10/8 on the left side of Chennai to Ennore High Road on 03.06.2022 and issued the Show Cause Notice under Section 28(2)(ii) of the Tamil Nadu State Highways Act, 2001, vide Lr.No.82/C.2/2022, dated 30.06.2022 to 44 occupants including two religious structures, encroached on the road alignment, seeking explanation on their encroachment within 7 days from the receipt of the said notice. It is further stated in the status report that some of them appeared in person and produced copies of Ration Card, Voter ID, Pan Card and Bank Pass Book, however none of them produced any document to claim title over the lands encroached by them. Meanwhile, a common representation was submitted by



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“Masthan Koil Pettaiyil Kudiyirukkum Oor Podhumakkal” claiming that they have been in occupation of lands comprised in S.Nos.34/1A, 1B & 2A, prior to the formation of Kamadevan Nagar and finally have requested to pass orders to continue their occupation without disturbance.

6. It is further stated by the fifth respondent in the status report that since none of them produced any valid documents to continue their occupation on the Highways Road, their request was rejected and final notice was issued to all the 44 occupants, vide impugned order dated 15.06.2022, under Section 28(2)(ii) and 61 of the Tamil Nadu Highways Act, to vacate from the encroached lands in highways, within 7 days from the receipt of the notice, failing which they would be evicted by force. Subsequently, a meeting was convened by the District Revenue Officer, Chennai to evict the encroachments in the Highways of Thiruvotriyur Taluk at 12.30 p.m. on 27.06.2022. In the meeting, the Additional Personal Assistant to Collector (Land), Assistant Engineer (Highways), Assistant Engineer (CMWSSB), Assistant Divisional Engineer (Highways), Assistant Engineer (Chennai Corporation), Executive Engineer (Chennai Corporation) and Tahsildar (Thiruvotriyur) have participated, in which various aspects have been



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discussed as to whether notices have been issued with respect to removal of encroachment; whether there is temple, mosques, Government buildings, houses are existed in the encroached lands and ensure the notices given to them and also information has been sent in connection with removal of encroachments to the concerned departments such as CMWSSB, Fire Service Electricity Board and Chennai Corporation. The respondents took a stand that they are taking steps to remove the encroachments and it will be removed as per the directions of this Court after getting police protection and also after ensuring that there is no law and order problem.

7. Thus, according to the learned State Government Pleader for the respondents 1 to 4, the petitioners have not produced any substantive document in support of their claim of title in respect of the lands encroached by them and except the patta granted in favour of one Kuppan/8th petitioner herein, no other document has been placed before this Court.

8. In the light of the above categorical stand taken by the respondents in the Status Report, the contention of the petitioners cannot be accepted. However, it is open to the respondents to verify the genuineness of the



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document / patta submitted by Mr.K.A.Kuppan / 8th petitioner in respect of his claim over the land occupied by him within a period of one week from the date of receipt of a copy of this order and after affording opportunity to him, the respondents shall take final decision with regard to removal of encroachment within a period of eight weeks thereafter. As regards the other writ petitioners are concerned, in the absence of any material to substantiate their claim of title over the lands in possession, they are not entitled for any relief. It is also made clear that this order will not stand in the way of the petitioners to produce any other documents before the authority concerned to show that they are the lawful owners of the properties occupied by them.

9. The Writ Petition stands disposed of with the above directions. No costs.

[D.K.K., J.] [T.V.T.S., J.]
28.10.2022

Index : Yes / No

Internet : Yes / No

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To

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Highways Department,
No.485, MTB Building,
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