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WP Nos.22899 of 2016 and 5661 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11-04-2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP Nos.22899 of 2016 and 5661 of 2017

And

WMP Nos.19589 of 2016 and 6048 of 2017

1.A.Thangarasu (Deceased)

2.Arayer

3.Selvi

4.Arunkumar

5.Gokulnath

[Petitioners 2 to 5 substituted as LR's of the

deceased first petitioner vide order of Court

dated 23.04.2021 made in WMP No.2615 of

2018 in WP No.22899 of 2016] ... Petitioners in WP 22899/2016

1.A.Thangarasu (Deceased)

2.Arayer

3.Selvi

4.Arunkumar

5.Gokulnath

[Petitioners 2 to 5 substituted as LR's of the

deceased first petitioner vide order of Court

dated 15.03.2023 made in WMP No.1777 of

2018 in WP No.5661 of 2017] ... Petitioners in WP 5661/2017

Vs.



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The District Collector,
Salem District,
Salem.

... R-1 in both WPs

The Executive Officer,
Thevur Town Panchayat,
Thevur,
Sankari Taluk,
Salem District.

... R-2 in both WPs

G.Subramaniam

... R-3 in WP 22899/2016

The Tahsildar,
Sankari Taluk,
Salem.

... R-4 in WP 22899/2016

[R-4 suo motu impleaded as per order of
Court dated 04.07.2016 made in
WP No.22899 of 2016]

The Assistant Engineer,
Group Housing Scheme,
Konganapuram Panchayat Union,
Konganapuram,
Salem District.

... R-3 in WP 5661/2017

Prayer: WP 22899 of 2016 is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, forbearing the respondents from causing any damage to the petitioner's house under construction in his patta land bearing S.No.630/5, Mylampatti Village Natham, Thevur Village, Sankari Taluk, Salem District under the Solar Powered Green Housing Scheme as per the order made in Na.Ka.No.139/15 dated 27.02.2016 passed by the second respondent, until the entire extent of S.Nos.621 and 630/4 are surveyed.



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Prayer: WP 5661 of 2017 is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order made in Na.Ka.No.139/2015 dated 14.02.2017 passed by the second respondent, quash the same and also issue direction to the respondents to disburse the construction cost of Rs.2,10,000/- as per the work order dated 27.02.2016 made in Na.Ka.No. 139/2015 issued by the second respondent.

For Petitioners in both WPs	: Mr.N.Manokaran
For Respondents-1, 2 and 4 in WP 22899/2016 and For Respondents-1 to 3 in WP 5661/2017	: : Mr.P.Sanjay Gandhi, Government Advocate.
For Respondent-3 in WP 22899/2016	: Mr.R.Ezhilarasan

COMMON ORDER

WP 22899 of 2016 is filed to forbear the respondents from causing any damage to the petitioner's house under construction in his patta land bearing S.No.630/5, Mylampatti Village Natham, Thevur Village, Sankari Taluk, Salem District under the Solar Powered Green Housing Scheme as per the order made in Na.Ka.No.139/15 dated 27.02.2016 passed



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by the second respondent, until the entire extent of S.Nos.621 and 630/4 are surveyed.

2. WP 5661 of 2017 is filed to call for the records pertaining to the impugned order made in Na.Ka.No.139/2015 dated 14.02.2017 passed by the second respondent, quash the same and also issue direction to the respondents to disburse the construction cost of Rs.2,10,000/- as per the work order dated 27.02.2016 made in Na.Ka.No. 139/2015 issued by the second respondent.

3. The petitioners state that the first petitioner is the owner of a house site measuring 574 sq. ft., bearing S.No.630/5, Mylampatti Village Natham, Thevur Village, Sankari Taluk, Salem District by virtue of a Sale Deed dated 07.06.2004. While-so, the Solar Powered Green Housing Scheme introduced by the Government and the petitioner submitted an application to avail the benefit of the said Scheme.

4. The respondents considered the application submitted by the petitioner and passed orders on 27.02.2016 to construct a house in the



property belongs to the petitioner. The Authorities conducted an inspection and approved the construction work in Natham in S.No.630/5. The construction works are over and the third respondent filed WP No.13499 of 2016 against the official respondents and the wife of the first writ petitioner T.Selvi to issue a Writ of Mandamus for removing the house constructed under the Solar Powered Green Housing Scheme. The said writ petition was filed on the ground that the petitioner encroached upon a portion of the public road. This Court passed an order on 12.04.2016, which reads as under:-

“Considering the limited scope of the relief sought by the petitioner, without going into the merits of the case, we direct the fifth respondent to consider and pass appropriate orders on the petitioner's representation dated 19 March 2016 on its own merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. Needless to state that an opportunity of hearing be afforded to the alleged encroacher, viz., the sixth respondent, before taking any consequential action, if need be.



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*The writ petition stands disposed of
with the above direction and observation.
Costs made easy.”*

5. Since the Authorities have initiated action based on the direction issued by this Court in WP No.13499 of 2016, the petitioner has filed WP No.5661 of 2017 seeking the relief to forbear the respondents from causing damage to the portion of the property and WP No.22899 of 2016 seeking the relief to forbear the respondents from causing any damage to the petitioner's house under construction in his patta land bearing S.No.630/5, Mylampatti Village Natham, Thevur Village, Sankari Taluk, Salem District under the Solar Powered Green Housing Scheme as per the order made in Na.Ka.No.139/15 dated 27.02.2016 passed by the second respondent.

6. This Court directed the official respondents to conduct Survey by measuring the land and pass appropriate orders. The Tahsildar, Sankari conducted the survey in respect of the land belongs to the deceased first writ petitioner and sent a letter to the Executive Officer, Thevur Town Panchayat, Thevur, Sankari Taluk, Salem District in proceedings dated 17.03.2023 stating that the deceased first petitioner has encroached upon the



portion of the Public Road, which is classified as Government Poramboke. It is found that the deceased first petitioner has extended the construction by encroaching upon the portion of the Public Road.

7. The learned Government Advocate appearing on behalf of the official respondents furnished the copy of the Report along with the photographs, which would reveal that the deceased first petitioner has extended the construction by encroaching upon the portion of the Public Road and therefore, the petitioners are not entitled for any relief.

8. As far as the encroachment is concerned, already there is an order of this Court and more-so, the Authorities Competent are bound to remove the encroachments and accordingly, clear the road for the benefit of the public at large. The encroached portion is to be removed by the official respondents without causing any undue delay.

9. The learned counsel for the petitioners brought to the notice of this Court that in the entire stretch, many other persons have also encroached upon the road area and against those persons, no action has



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been taken.

10. It is needless to state that in the matter of removing encroachments, the Authorities Competent cannot discriminate and all such encroachments on the road is to be removed by following the procedures as contemplated. Therefore, the Authorities / respondents are directed to conduct survey in respect of the encroachments made by the other occupants of that area and accordingly, remove all such encroachments made on the road in public interest and for the free usage of the road.

11. With the abovesaid observations, the writ petitions stand dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are also dismissed.

11-04-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn



To

1. The District Collector,
Salem District,
Salem.
2. The Executive Officer,
Thevur Town Panchayat,
Thevur,
Sankari Taluk,
Salem District.
3. The Tahsildar,
Sankari Taluk,
Salem.
4. The Assistant Engineer,
Group Housing Scheme,
Konganapuram Panchayat Union,
Konganapuram,
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S.M.SUBRAMANIAM, J.

Svn

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And 5661 of 2017

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