



WEB COPY



WP No. 18141 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MS. JUSTICE P.T. ASHA

Writ Petition No.18141 of 2019

M. Dhinakaran

.. Petitioner

Versus

1. The District Collector
Tiruvannamalai
Tiruvannamalai District

2. The Divisional Engineer
Highways Department
Construction and Maintenance
Thiruvannamalai

3. The Tasildhar
Tiruvannamalai Taluk
Tiruvannamalai.

4. Munusamy

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 to 3 to remove the illegal encroachment made by the fourth respondent in Survey No.27/2, Mannalurpet Main Road, Keel Anaikarai Village, Tiruvannamalai Taluk and District.

For Petitioner

: Mr.R.Rajarajan



WP No. 18141 of 2019

For R1 to R3

: Mr. A. Selvendran
Special Government Pleader

For R4

: No appearance

ORDER

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

The relief sought for in this writ petition is to direct the respondents 1 to 3 to remove the encroachments made by the fourth respondent in the land comprised in Survey No.27/2, Mannalurpet Main Road, Keel Anaikarai Village, Tiruvannamalai Taluk and District.

2. In the affidavit filed in support of the writ petition, it is stated by the petitioner that the land comprised in Survey No.64/1 bearing Plot No.55, measuring 1680 square feet in Vasavi Nagar was purchased by him through a registered sale deed dated 15.11.2018 and after purchase, he had also mutated the revenue records and obtained Patta No. 3172 in his name. The grievance of the petitioner is that the fourth respondent has encroached the land comprised in Survey No.64/1 which serves as entrance to reach his land and by virtue of such encroachment, he could not get access to his property. In this context, the petitioner has given a representation dated 13.02.2019 to the respondents 1 to 3 for removal of the encroachments. On receipt of the representation dated 13.02.2019, the second respondent sent replies dated



WP No. 18141 of 2019

08.03.2019 and 11.03.2019 stating that the writ petitions are pending before this Court and therefore, the encroachments could not be removed for the present. Aggrieved by the same, the present writ petition is filed.

3. The learned counsel for the petitioner submits that illegal construction has been made by the fourth respondent in the land classified as Road, which has denied the access to reach the property of the petitioner. The fourth respondent has encroached a public highways land and inspite of the same, the respondents have exhibited inaction in taking any steps to remove such encroachments. The learned counsel for the petitioner therefore prayed for issuing appropriate direction to the respondents 1 to 3 to remove the encroachments made by the fourth respondent within a time limit that may be specified by this Court.

4. The learned Special Government Pleader appearing for the respondents 1 to 3 submitted that the fourth respondent had encroached upon the land belonging to Highways Department by putting up a house construction. Therefore, a notice dated 21.08.2019 was issued to the fourth respondent under Section 28 (2) (ii) of The Tamil Nadu Highways Act by the Assistant Divisional Engineer, Highways (Construction & Maintenance),



WP No. 18141 of 2019

Tiruvannamalai Sub-Division. It is further submitted that the second respondent will proceed further to remove the encroachments caused by the fourth respondent at an early date and prayed for dismissal of the writ petition.

5. The learned counsel for the fourth respondent submitted that the land in question was purchased by the son of the fourth respondent on 24.05.1996 through a registered sale deed. While so, the allegation raised in the present petition as if the fourth respondent had encroached the Highways land is highly objectionable. The fourth respondent and his family members are in possession of this land from 1996 and paying taxes and charges to the authorities concerned. In fact, the Highways Department proposed to extend the road on both sides and called upon the fourth respondent to clear 3 feet from his land for the road and immediately, the fourth respondent had voluntarily obliged and 3 feet of land has been taken up by the Highways Department. While so, it cannot be said that the fourth respondent had encroached the land belonging to the Highways and thus, he prayed for dismissal of the writ petition.

6. We have heard the counsel for the parties and perused the materials placed on record. In para Nos. 3 and 4 of the counter affidavit filed



WP No. 18141 of 2019

by the second respondent - Divisional Engineer, Highways Department, Construction and Maintenance, Tiruvannamalai Town, it has been stated as follows:-

"3. I submit that the fourth respondent has encroached upon the State Highways Road as noted above by construction of a house. I submit that necessary notice under Section 28 (2) (ii) of the Tamil Nadu Highways Act, 2001 has been issued to the fourth respondent by the Assistant divisional Engineer, Highways, Construction and Maintenance, Tiruvannamalai Sub Division vide Lr.No.02/2019/A, on 21.08.2019.

4. It is submitted that the said encroachment will be evicted following due process of law at the earliest."

7. In the light of the above statement made in the counter affidavit of the second respondent, this Court, without going into the merits of the case, directs the second respondent to consider the claim of the petitioner, if not already considered, and pass appropriate orders on merits and in accordance with law, after affording an opportunity of hearing to him and the fourth respondent herein, within a period of eight (8) weeks from the date of receipt of a copy of this order. Accordingly, this Petition is disposed of. No costs.

[R.M.D., J] [P.T.A., J]
06.02.2023

Index : Yes / No
Internet : Yes / No
av/rsh

Copy to:

<https://www.mhc.tn.gov.in/judis>



WP No. 18141 of 2019

WEB COPY

1. The District Collector
Tiruvannamalai
Tiruvannamalai District
2. The Divisional Engineer
Highways Department
Construction and Maintenance
Thiruvannamalai
3. The Tasildhar
Tiruvannamalai Taluk
Tiruvannamalai.



WEB COPY



WP No. 18141 of 2019

and
P.T.ASHA, J

av/rsh

WP No.18141 of 2019

06.02.2023