



W.P.(MD).No.20886 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.10.2023

CORAM

**THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

W.P.(MD).No.20886 of 2013
and
M.P.(MD).No.2 of 2013

Somathi

.. Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Represented by the Principal Secretary to Government,
Highways and Minor Ports Department,
Secretariat,
Fort St.George,
Chennai – 600 008.
- 2.The Chief Engineer,
Construction and Maintenance Wing,
Highways Department,
Kamarajar Salai,
Chepauk,
Chennai – 600 005.
- 3.The Divisional Engineer (Highways),
Construction and Maintenance,
Kanyakumari Division,
Nagercoil,
Kayakumari District.



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4.The Assistant Divisional Engineer (Highways),
Construction and Maintenance,
Thovalai @ Boothapandi,
Kanyakumari District.

5.The District Collector,
Nagercoil,
Kanyakumari District.

6.The Junior Engineer,
Tamil Nadu Electricity Board,
Thadikkarankonam,
Kanyakumari District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the 4th respondent dated 16.12.2013 in Lr.No.423/2013/அ1 and quash the same and consequently issue a direction forbearing the respondents from interfering with the petitioner's peaceful possession and enjoyment of the property situated over an extent of 2 cents in Survey No.35/1 with house bearing new Door No.5-25, Balamore Road, Thadikarankonam Post, Thovalai Taluk, Kanyakumari District .

For Petitioner	: Mr.N.Dilip Kumar
For R-1 to R-3,	: Mr.SP.Maharajan
R-5 & R-6	Special Government Pleader



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ORDER

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(Order of the Court was made by S.M.SUBRAMANIAM,J.)

The learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents made a submission that the issues raised in the present Writ Petition are no more *res integra*. This Court considered the issues and passed the following orders in W.P. (MD).Nos.486 to 489 of 2014 vide order dated 17.11.2022:

"Challenging the eviction notices issued by the fourth respondent, dated 16.12.2013, the petitioners have filed the present Writ Petitions.

2.Earlier when the petitioners were issued with show-cause notices, they challenged the same in W.P(MD)Nos.6701 to 6703 and 6705 of 2013 and this Court, vide common order dated 03.05.2013 has passed the following order:-

"4.Accordingly, these Writ Petitions are disposed of by directing the petitioners to submit their explanation to the impugned notices, along with supportive documents to substantiate their claim, within a period of 30 days from the date of receipt of a copy of this order. On receipt of such explanation, the fourth respondent shall arrange for survey of the property in question through the Revenue Department, in the presence of the



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petitioners and after notice to the petitioners. After completing the survey, the fourth respondent shall consider the petitioners' explanation along with the documents presented by them and also taking into consideration the effect of the decree passed in the civil proceedings and thereafter, pass a very reasoned order, on merits and in accordance with law. Till such order is passed by the respondents, the status quo prevailing as on date, shall be maintained.”

3.It is the contention of the petitioners that pursuant to the aforesaid order, though the Taluk Surveyor inspected the property in question and took measurements on 04.07.2013 in the presence of the petitioners, the report of the Taluk Surveyor was not served and vide show cause notice, dated 02.12.2013 the petitioners were called upon to give their explanations/objections, without even supplying with the documents relied on in the said show-cause notice. However, the petitioners submitted their explanations/objections on 11.12.2013 citing all these defects and also put forth their case to the effect that their properties are not situated in the Government poramboke land as alleged by the authorities. However, to the shock and surprise of the petitioners, the present impugned eviction notices have been issued, which absolutely reflect non-application of mind on the part of the fourth respondent. Though the petitioners in their explanations/objections have specifically stated that the



documents relied on in the show-cause notices were not supplied to them and therefore, they could not make any effective explanation and also specifically contended that their houses are not situated in the Government poramboke lands, the impugned order does not discuss any of the objections raised by the petitioners. Therefore, the impugned orders being bereft of any reasons, are liable to be set aside.

4.Heard both sides.

5.As rightly contended by the learned counsel appearing for the petitioners, perusal of the impugned orders does not reflect consideration of the petitioners' explanations/objections and it is cryptic orders. It is well settled that reasons are heart-beats of any administrative order and the impugned order without assigning any reason as to why the objections of the petitioners could not be accepted is arbitrary. Despite this Court in W.P(MD)Nos.6701 to 6705 of 2013, dated 03.05.2013 has specifically directed the fourth respondent to consider the petitioners' explanations/objections, in clear violation of the said directives, the impugned notices have been issued. Therefore, there is a total non-application of mind on the part of the fourth respondent, as such, the impugned orders are liable to be set aside.



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6.In view of the above, the impugned orders, dated 16.12.2013 passed by the fourth respondent are set aside and the matter is remitted back to the fourth respondent to conduct necessary survey in the place in question in the presence of the parties concerned after serving them notices in advance within a period of four weeks from the date of receipt of a copy of this order. After survey, if any encroachment is noticed, the same shall be removed, after considering the objections of the petitioners in proper perspective and also after affording sufficient opportunity of personal hearing to all the parties concerned and by following due process of law, within a period of four weeks thereafter.

7.The aforesaid act of the authorities concerned violating the directions of this Court cannot be countenanced and therefore, the first respondent shall initiate departmental action against the erring officials concerned, who failed to comply with the order passed by this Court in W.P(MD)Nos. 6701 to 6705 of 2013, dated 03.05.2013.

8.Accordingly, these Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed. "



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2. Accordingly, the Writ Petition stands allowed in terms of the order cited supra. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

(S.M.S.,J.) (V.L.N.,J.)
30.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

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Chennai – 600 008.

2.The Chief Engineer,
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