



W.P.(MD)No.11191 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD)No.11191 of 2014
and M.P.(MD) No.1 of 2014

S.Ponnupillai

... Petitioner

Vs.

1.The District Collector,
Nagercoil,
Kanyakumari District.

2.The Assistant Divisional Engineer,
National High Ways,
Nagercoil – 629 001,
Kanyakumari District.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to impugned order passed by the 2nd respondent dated 04.07.2014 in க.எண்.25 A/2014 / இ.வ.அ. and quash the same and consequently forbear the respondents from interfering with the petitioner's peaceful possession and enjoyment situated in Resurvey No. 303 ad-measuring 1.5 cents bearing old door no.34C2 and 34C3 corresponding to new door Nos.4.74 and 4.75 respectively situated in Nallur Village, Vilavancode Taluk, Kanyakumari District.



W.P.(MD)No.11191 of 2014

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.N.Satheeshkumar
Additional Government Pleader for R1

No appearance for R2

ORDER

(Order of the Court was made by **V.LAKSHMINARAYANAN, J.**)

The petitioner claims to be in occupation of a property situated in S.No. 303 of Nallur Village, Vilavancode Taluk, Kanyakumari District. The petitioner admits that he is not the owner of the property and that it belongs to the Government. However, he claims that he is in occupation of the property for over several decades.

2. According to the petitioner, his father Selvamani Nadar encroached on this land. After the death of his father, the petitioner and his brother Sasi Kumar have continued the said occupation. On the strength of their possession, when the National Highways attempted to evict them, they presented O.S.No.292 of 2000. This is a suit for bare injunction restraining the first respondent – Assistant Executive Engineer and the second respondent viz., State of Tamil Nadu not to interfere with their possession. The said suit came to be decreed on 31.01.2011.

2/7



W.P.(MD)No.11191 of 2014

On the strength of the decree, the Assistant Executive Engineer initiated proceedings calling the petitioner to hand over possession on 04.07.2018. This proceedings is challenged before us by the petitioner.

3. Mr.N.Dilipkumar, learned counsel for the writ petitioner would argue that in the light of the decree in O.S.No.292 of 2000 on the file of District Munsif Court, Kuzhithurai, dated 31.01.2011, the second respondent – Assistant Executive Engineer has no jurisdiction to issue the notice as it is contrary to the decree of the Civil Court. He would further submit that since the petitioner is in possession of the property, which belongs to the Revenue Department and does not vest with the National Highways, the second respondent is incompetent to issue the notice. He would also allege that the impugned order is in violation of principles of natural justice and there is mis-appreciation of the decree passed by the Civil Court by the second respondent.

4. Before we go into the merits of the case, we have to necessarily point out that we have to exercise the powers vested with us under Article 227 of the Constitution of India to vary the decree in O.S.No.292 of 2000.



W.P.(MD)No.11191 of 2014

5. The true owner of the property is entitled for an injunction against the entire world. Here is a case, where it is contested by the second respondent that it belongs to the National Highways. Therefore, the plaintiffs ought to have impleaded the appropriate authority viz., Union of India, which is the owner of the National Highways as per Section 4 of the National Highways Act, 1956, and obtained a decree. Instead the suit has been presented against the Assistant Executive Engineer, who by no stretch of imagination is the owner of the National Highways. The statute declares that the property vests with the Union of India and for the purpose of removal of encroachment over the National Highways, the Act has empowered the Union of India to give appropriate directions to the State Government under Section 6 of the National Highways Act. Therefore, the argument that the decree in O.S.No.292 of 2000 will bind the National Highways and the Union of India is a misplaced one.

6. Apart from that, as per the decree of the Civil Court permanent injunction is granted against the State of Tamil Nadu as well as the Assistant Executive Engineer, not to interfere with the possession of the plaintiffs. Such a decree cannot be granted when the writ petitioner / plaintiffs admittedly not the owners of the property. Therefore, we in exercise of the powers vested in us under



W.P.(MD)No.11191 of 2014

Article 227 of the Constitution of India and in the light of the judgment which has been pronounced by this Court in *Varada Reddiar And Anr. vs Jayachandran* reported in **1996 (2) CTC 611**, we modify the decree as to the extent that the plaintiffs will not be evicted from the property except otherwise in accordance with law.

7. With this modification of the civil Court decree we now move on to the next submission.

8. Now, the decree is not standing in the way of the National Highways Authority. Further, the judgment of the Full Bench of this Court *Ramaraju v. State of Tamil Nadu* reported in **2005 (2) CTC 741** does not bind the National Highways as it was not a defendant in the said suit. Therefore, the National Highways Authorities under the National Highways Act or the Revenue Department are permitted to issue notice to the petitioner under the provisions of the applicable statutes. On such notice, the petitioner shall respond to the same. It is made clear that the decree having been modified by us it will not be a bar for the authorities to initiate action to remove all the encroachment under the relevant statutes.



W.P.(MD)No.11191 of 2014

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9. Accordingly, the Writ Petition stands disposed of. No costs.

Consequently, connected Miscellaneous Petition is closed.

(S.M.S., J.) & (V.L.N., J.)
31.10.2023

NCC : Yes / No

Index : Yes / No

SJ



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W.P.(MD)No.11191 of 2014

S.M.SUBRAMANIAM, J.

AND

V.LAKSHMINARAYANAN, J.

SJ

W.P.(MD)No.11191 of 2014

31.10.2023