



W.P(MD)No.10090 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.10090 of 2015
and
M.P.(MD)Nos.1 & 2 of 2015

T.Venkatesan

... Petitioner

Vs.

The Assistant Divisional Engineer,
Highways Department (C&M)
Nanguneri,
Tirunelveli District.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Ceritorarified Mandamus, to call for the records of the impugned order of the respondent in Thakkeethu. NO. 45/2015/A1/dated 10.06.2015 and quash the same and consequently forbear the respondent from interfering with the petitioners peaceful possession and enjoyment of the shops bearing Door No.4,4-B,61-A,62- and 62-B situated at Natham Survey No.690/23 Vysarajapuram, Kalakad, Tirunelveli District..

For Petitioner : Mr.H.Arumugam

For Respondent : Mr.S.RA.Ramachandran
Additional Government Pleader



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ORDER

Heard the learned counsel on either side.

2.The respondent had issued a general notice dated 10.06.2015 informing the encroachers that encroachment committed in Kalakad-Chidambarapuram highways will be removed. After coming to know about the said notice, the petitioner filed the present writ petition questioning the same and for forbearing the respondent from interfering with his possession and enjoyment of the petition mentioned shops located in natham Survey No.690/23, Vysarajapuram, Kalakad Village, Tirunelveli District.

3. The respondent filed counter affidavit and the learned Additional Government Pleader took me through its contents.

4. When the matter was taken up for hearing, the learned counsel appearing for the petitioner pointed out that the petitioner had filed O.S.No.112 of 2015 on the file of the District Munsif Court, Nanguneri seeking the relief of declaration and permanent injunction and that the suit was decreed on 23.12.2016. According to the learned counsel for the petitioner, since this decree has become final, the relief sought for in the present writ petition has to be granted. Before going into the facts, I need to make one observation that O.S.No.112 of 2015 was decreed exparte on 23.12.2016. It is not as if a learned District Munsif straight away rushed into passing the decree. The suit was filed



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on 25.08.2015. It was numbered in the very same year. Only on 23.12.2016, an ex parte decree came to be passed. It is seen that there was no representation on the side of the respondent. The District Collector, Tirunelveli was the first defendant, while the respondent herein was shown as the fourth defendant. They were duly served and the Government Pleader originally entered appearance. But, no written statement was filed. There was no appearance on their behalf on 11.08.2016, when the case was called. It is not as if this is the first time I am coming across such ex parte decrees. In several cases, it is seen that the Government Pleaders appointed in District Courts have not bothered to appear and file written statement. The attention of the District Collector, Tirunelveli is drawn to this case. I direct the District Collector, Tirunelveli to convene a meeting of the law officers as well as the concerned officials and issue a standard operating procedure. The guidelines of the District Collector will be formulated in such a way so as to ensure that in future, not even a single government case goes undefended or on default. If any such occurrence takes place, accountability must be fixed. If the Government counsel has been negligent, he must be removed from the rolls. If the official concerned had been remiss in discharge of his duties, disciplinary action must be taken against the official concerned. I expect the District Collector, Tirunelveli to put in such a standard operating procedure within a period of four weeks from the date of



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receipt of a copy of this order.

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5. Coming to the facts of this case, what has been issued is only a general notice. It is not addressed to the petitioner in particular. It is also seen that the impugned notice had been issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905. I fail to understand as to how the said provision would be applicable. If according to the respondents, state highways has been encroached, action must be taken under Section 28 of the Tamil Nadu Highways Act, 2001. Section 28 of the Act is as follows:-

28.(1) The Highways authority or any person authorised by it in this behalf shall, at such time as may be considered necessary, conduct such checks and periodical inspection, of the highway boundaries, with the view to ensure the prevention of unauthorised encroachment and the removal of such encroachment.

(2) The Highways authority or any person authorised by it in this behalf, may--

(i) remove, without any notice, any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching the highway or in any area where the construction or development of a highway is undertaken or proposed to be undertaken;

(ii) remove any immovable structure, whether permanent or temporary in nature, encroaching the highway or in the area vested with Government under this Act, after issuing a show cause notice against such removal, returnable within a period of seven days from the date of receipt thereof: Provided that any representation received within the time limit shall be considered by the authority or officer concerned before passing final orders.



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Section 63 of the Act contains a statutory bar. It reads as follows:-

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63. (1) No suit or other legal proceedings shall lie against the Government of anything which is in good faith done or intended to be done by or under this Act.

(2) (a) No suit, prosecution or other proceedings shall lie against the State Highways Authority or any Highways authority, or officer or person for any thing done or intended to be done under this Act, without the previous sanction of the Government, and such suit, prosecution or proceeding shall be filed within thirty days from the date of the act complained of.

(b) No such authority or officer or person shall be liable in respect of any such Act in any civil or criminal proceedings, if the Act was done in good faith in the course of the execution of the duties or the discharge of the functions assigned to such authority or officer or person by or under this Act.

6. The case of the petitioner is that he is in occupation of the natham land and that he has been issued with natham patta. It is well settled that on natham lands, the Government cannot have any right or title or interest. But then, the question that arises for consideration is whether the petitioner is occupying only a natham land or he has committed encroachment on state highways. It can be found out only during enquiry. I therefore permit the respondent to issue proper notice to the petitioner. Proper enquiry shall be held. It is open to the respondent herein to take appropriate action in accordance with law for removal of encroachment, if any.



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7. With this liberty to the respondent, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

07.09.2023

Index : Yes / No

Internet : Yes/ No

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NOTE: Registry to mark a copy of this order to the
District Collector, Tirunelveli.

To

The Assistant Divisional Engineer,
Highways Department (C&M)
Nanguneri,
Tirunelveli District.

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