



WEB COPY



W.P. No.5877 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2024

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

and

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. No.5877 of 2020 & W.M.P. No.6891 of 2020

S. Rajalingam

Petitioner

v

1 The District Collector
Chengalpet District
Chengalpet

2 The District Revenue Officer
Chengalpet District

3 The Tahsildar
Thirupporur Taluk
Chengalpet District

4 The Divisional Engineer
Tamil Nadu Highways Department
(Construction & Management)
Chengalpet Town
Chengalpet District

5 The Assistant Divisional Engineer (Highways)
Office of the Tamil Nadu Highways Department
(Construction & Management)
Chengalpet Town
Chengalpet District

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus forbearing the respondents from in any way interfering with the



W.P. No.5877 of 2020

possession and enjoyment of the petitioner's house at No.1, School Street, Kalawakkam Village, Thiruporur Taluk, Chengalpet District, till the third respondent provides alternative house or landless poor certificate to the petitioner.

For petitioner Mr. Durai Gunasekaran

For respondents Mr. A. Selvendran
Special Government Pleader

ORDER

(made by S. VAIDYANATHAN, J.)

The petitioner seeks a direction forbearing the respondents from interfering with his possession and enjoyment of his house, until he is provided an alternative house or a landless poor certificate by the third respondent.

2 The succinct facts, as culled out from the petitioner's affidavit, leading to the institution of this writ petition are as under:

2.1 Post the demise of their father in the year 1999, the petitioner (Rajalingam) and his two brothers (Arasalingam and Sundaralingam), have been in occupation of the house with asbestos roof in S.No.199 at Kalavakkam Village and they have been paying electricity charges, house tax and property tax to the authorities concerned.



2.2 While so, when the petitioner's brother Arasalingam was issued with eviction notice on the ground that he had encroached upon the land of the State Highway, he (Arasalingam) filed W.P. No.37848 of 2016, which, *vide* order dated 01.11.2016, was disposed of holding that the earlier order should be treated as a show cause notice and giving liberty to the petitioner's brother to raise his objections. Despite his brother Arasalingam making his objection, he was issued with an eviction notice by the fifth respondent which was challenged in W.P.No.17801 of 2017, in which, the impugned order was confirmed *vide* order dated 18.12.2018 and a direction was issued that the petitioner's brother Arasalingam be provided an alternative accommodation on he fulfilling the eligibility criteria therefor.

2.3 Pursuant thereto, the fifth respondent *vide* proceedings dated 17.07.2019, confirmed the encroachment and instructed the petitioner and his brother to furnish a “landless poor certificate” from the Revenue Department in case they are landless. However, even before the submission of such a certificate by the petitioner and his brother, the petitioner's brother Arasalingam's house was razed to the ground on 29.01.2020.

2.4 Hence, on the apprehension that his house too will be demolished even before he could furnish the landless poor certificate and without he being



provided alternative house as per Section 26 of the Tamil Nadu Highways Act, the petitioner has approached this Court by way of this writ petition seeking the aforesaid relief.

3 Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

4 From a bare perusal of the “A” register, it is as clear as the sky that the land in question measuring 5 hectares and 445 ares is a பாதை (way). Further, in the writ petition being W.P. No.17801 of 2017 filed by the petitioner's brother Arasalingam challenging the eviction notice, this Court, *vide* order dated 18.12.2018, has held as under:

“19. However, considering the submissions made by the Learned Counsel on either side and in view of the fact that the Petitioner filed W.P.No.37848 of 2016 on earlier occasion, in which, on 01.11.2016 he was directed to submit his Reply within seven days from the date of order and that he had furnished his detailed Reply/Response on 07.11.2016 [for the impugned notice dated 14.10.2016 of the Second Respondent] and subsequently, the Second Respondent had issued the impugned notice dated 13.06.2017 to the Petitioner wherein there was no reference to the earlier Reply dated 07.11.2016 submitted by the Petitioner and also this Court, keeping in mind of the fact that the Petitioner had furnished a detailed representation dated 21.06.2017 to the Second Respondent, directs the Second Respondent to consider the Reply/Response/Representation of the Petitioner dated 07.11.2016 and 21.06.2017 and to pass a speaking Final Order, by dealing with the points raised by him, within a period of three weeks from the date of receipt of copy of this order. If the Second Respondent comes to a positive conclusion that the Petitioner is an Encroacher; in the subject property, then, necessary further steps may be taken for removal of the encroachment to its logical end. In case, the Petitioner is a Landless and hapless person and if he fulfils the eligibility criteria for an Alternative site, then, the Respondents 1 to 3 shall provide him with an Alternative site as expeditiously as possible. In case of any resistance offered, it is open to the Authorities to seek the assistance of Law Enforcing Machinery to carry out the eviction of encroachment as per Law.”



WEB COPY

5 As already stated in paragraph 2.4, *supra*, the petitioner apprehends that his house too may be demolished even before he could be issued with “landless poor certificate”.

6 Considering the facts and circumstances of the case, more particularly, the fact that the encroachment notice issued to the petitioner's brother Arasalingam has been confirmed by the fifth respondent after consideration of his objection, we are of the view that it is for the third respondent to consider the petitioner's case *qua* issuance of “landless poor certificate” and the petitioner cannot eternally continue to be an encroacher and squat on the Government property.

7 Accordingly, leaving it open to the third respondent to decide as to whether the petitioner is entitled to alternative accommodation based upon his request, we direct the respondents to remove the encroachment in question within a period of one month from the date of receipt of a copy of this order. It is made clear that the pendency of the injunction suit in O.S. No.154 of 2019 on the file of the District Munsif Court, Chingleput, filed by the petitioner and his siblings, in respect of the same property, is not a bar for the authority concerned to consider and take a decision, in view of the fact that this Court, in this order, has rejected



W.P. No.5877 of 2020

the petitioner's plea that he is not an encroacher, as a natural corollary to which, the aforesaid suit will have to fail. In other words, when the petitioner has filed this writ petition and so also the suit seeking the same relief, of course, the prayer in this writ petition being differently worded, and this Court has rejected the stand of the petitioner that he is not an encroacher, naturally, the Civil Court cannot decree the suit and needless to say, the converse position also will apply. Be it noted, the petitioner, in effect, has attempted to make a mockery of justice, to which, this Court cannot turn a Nelson's eye.

This writ petition stands disposed of with the above direction and observations. Costs made easy. Connected W.M.P. is closed.

(S.V.N., J.) (K.R.S., J.)
05.01.2024

cad



W.P. No.5877 of 2020

To

- 1 The District Collector
Chengalpet District
Chengalpet
- 2 The District Revenue Officer
Chengalpet District
- 3 The Tahsildar
Thirupporur Taluk
Chengalpet District
- 4 The Divisional Engineer
Tamil Nadu Highways Department
(Construction & Management)
Chengalpet Town
Chengalpet District
- 5 The Assistant Divisional Engineer (Highways)
Office of the Tamil Nadu Highways Department
(Construction & Management)
Chengalpet Town
Chengalpet District



WEB COPY



W.P. No.5877 of 2020

S. VAIDYANATHAN, J.

and

K. RAJASEKAR, J.

cad

W.P. No.5877 of 2020

05.01.2024