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W.P. No.11500 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.11500 of 2020 & W.M.P. No.14054 of 2020

The Madras Vanaspati Ltd.
by its Managing Director
A. Kodeeswaran
No.18, Power House Road
Villupuram

Petitioner

v

- 1 The District Collector
Villupuram
- 2 The District Revenue Officer
Villupuram
- 3 The Commissioner
Villupuram Municipality
- 4 The Tahsildar
Villupuram
- 5 The Divisional Railway Manager
Southern Railway, Chennai

Respondents

(R5 *suo motu* impleaded *vide* order dated
04.01.2024 made in W.P. No.11500 of 2020)

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents to remove the encroachments in the entire Power House Road, Villupuram, and also direct the respondents to stop further encroachments in the Power House Road, Villupuram.



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For petitioner Mr. N. Suresh
For RR 1, 2 and 4 Mr. A.Selvendran
 Special Government Pleader
For R3 Mr. P. Srinivas
 Standing Counsel
For R5 Mr. P.T. Ramkumar
 Standing Counsel

ORDER

(made by S. VAIDYANATHAN, J.)

This writ petition has been filed seeking a writ of mandamus directing the respondents to remove the encroachments in the entire Power House Road, Villupuram, and also to direct the respondents to stop further encroachments in the Power House Road, Villupuram.

2 The facts leading to the filing of this writ petition could be succinctly stated thus:

2.1 The petitioner is a company registered under the Companies Act and it is a manufacturing unit of vanaspati which is marketed throughout India. The petitioner company has its Registered Office at No.18, Power House Road, Villupuram. Since the office of the Electricity Board is situated in that road which is a very old one, the said road is named after the Power House.

2.2 According to the petitioner, encroachments on the Power House Road started in a slow and phased manner and it has gone to a level of creating threat to the pedestrians and vehicle users; some of the political parties have also



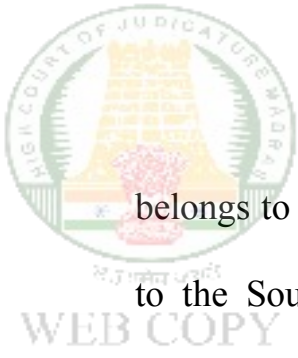
constructed in the Power House Road, as a sequel to which, the 20 ft. road has been narrowed down to 8 ft. and the authorities also do not take any step to restore the width of the road.

3 The third respondent has filed a counter affidavit, wherein, it has been stated that pursuant to the order dated 24.06.2021, inspection of the site in question was conducted; on inspection, it was found that the Power House Road runs from north to south from the Pondy Road on the north till the burial ground on the south; the said road is bounded on the west by the Railway quarters and the petitioner's land along with a few other patta lands; on the eastern site, it is bound by the TANGEDCO lands and other patta lands; the said road is running in Ward B, Block No.23, T.S. Nos.1 & 2, Block 22, T.S. Nos.2 & 42; the lands in Block No.20, T.S. No.2/1 belong to the Railways and the same are used as a part of the road; at the point where it branches from the Pondy Road, the width of the municipal land under the road is only 4.9 metres and another width of 6.8 metres is, in fact, the Railway land; the survey registers and the FMB map show that a major portion of the Power House Road is only on the Railway lands and only a smaller width is on the Municipal land; there is a Mariamman Temple in T.S.No.1, Block No.23, which is partly on the Municipal lands; the said temple has been in existence for more than 60 years and kumbhabhishekam for the said temple was performed in the year 1986; the said temple is indicated in the FMB sketch; on the eastern side, the temple is on Mariamman Koil Street and on the west, it ends in



the Railway land; between the Mariamman Temple and other structures on the western side, a width of 15 ft. is available for the passage of traffic on the north-south road; the structure of the temple and the Kumbhabhishekam invitation of the year 1986 show that the temple has been in existence for 40 years; however, there is no evidence to show that the temple has been in existence for 60 years as the records relating to the same are not available in the survey registers; the Power House Road is laid with cement concrete by the Municipality to its available width; at the time of inspection by the third respondent, the residents of the area indicated that the temple is very old and that they have been worshipping the said deity for several generations; apart from the Mariamman Temple, there is no other encroachment on the Power House Road in the Municipal lands and only in the Railway lands, there are 34 tiled houses which are built giving sufficient carriageway for the movement of vehicles.

4 The Tahsildar, Villupuram, the fourth respondent, also has addressed a communication dated 28.06.2021 to the learned Government Pleader, enclosing a copy of the rough sketch prepared by Sub Inspector (Land Survey), Municipal Office, Villupuram. It is stated in the said report that an extent of 03143 sq. m. belongs to the Southern Railway and that it has been used by the public as a road; though, at the beginning of the Power House Road, there is a width of 11.7 m. which is maintained till the Mariamman Temple, from the point of Mariamman Temple, the width of the Power House Road has got shrunk to 4.9 m. which extent



belongs to the Municipality and the remaining 6.8 m. [11.7 m. (-) 4.9 m.] belongs to the Southern railway; a portion of the encroachment made by Mariamman Temple is on the Town Road and the remaining encroachment is on the land of the Southern Railway; there are about 34 tiled structures which are houses built on the land of the Southern railway and no houses are built on the Town Municipal Road; pursuant to the orders passed by this Court, eviction notice was also issued by the competent authority and eviction process also will take place in accordance with law.

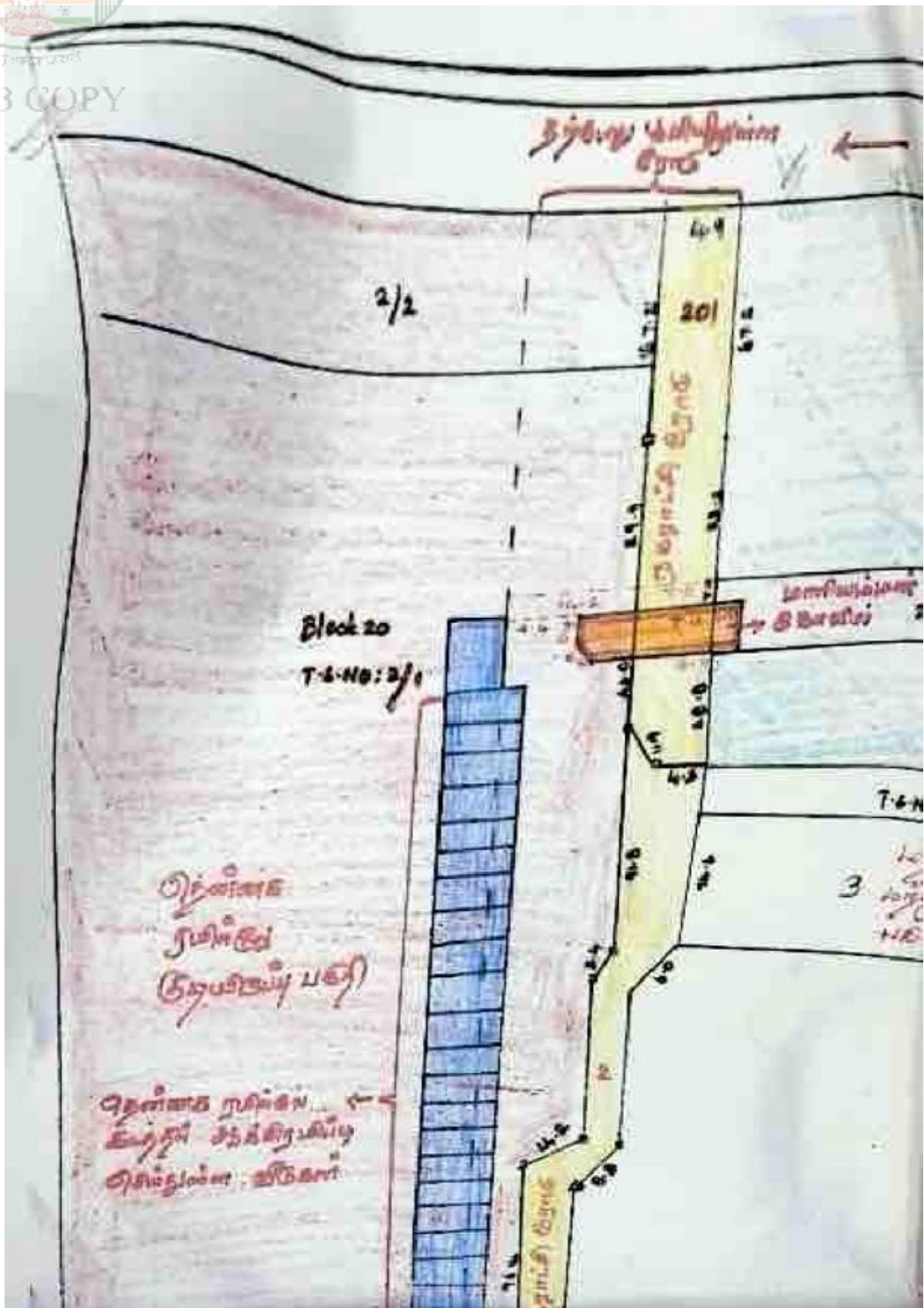
5 Heard both sides and perused the materials available on record.

6 On a perusal of the rough sketch and other documents annexed to the communication dated 28.06.2021 of the fourth respondent, it is crystal clear that the temple in question has been constructed encroaching Mariamman Koil Street, Power House Road and also the Railway lands. In other words, the Mariamman Temple encroaches two roads and also the Railway lands. It is also seen that the public, to go from one end of the Power House Road to the other end, are now taking a circuitous route using the Railway land.

7 To appreciate the rank encroachment made by the temple, it will be apposite to extract below the rough sketch enclosed with the aforesaid communication of the Tahsildar:



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Since as per the fourth respondent, the Mariamman Temple has been constructed encroaching even the Railway lands, we *suo motu* impleaded the Divisional Railway Manager, Chennai, as the fifth respondent and informed Mr.P.T. Ramkumar, Standing Counsel for Railways, to appear for the fifth respondent.

9

Accordingly, Mr. P.T. Ramkumar, on instructions, submitted that road survey was conducted yesterday (04.01.2024), from which, it was found that after the temple in question, more number of houses than what was stated by the Tahsildar, have been constructed.

10

He also brought to the notice of this Court the order passed by the Supreme Court in **Utran Se Besthan Railway Jhopadpatti Vikas Mandal v Government of India and others**¹, which was a case involving encroachment made in the lands of the Western Railway, wherein, a slew of directions was issued for removal of encroachment from the Western Railway lands, following the earlier judgment of the Supreme Court in **Ahmedabad Municipal Corporation v Nawab Khan Gulab Khan**². It is also apropos to point out that the Supreme Court had specifically observed that the District Collector should ensure that as a measure of rehabilitation, the persons evicted may also be given residential accommodation, subject to their eligibility. For ease of reference, the said directions are re-produced below:

¹ <https://www.mhc.tn.gov.in/judis>
dated 06.12.2021 passed in S.L.P. (Civil) Diary No.19714 of 2021
² (1997) 11 SCC 121



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“Hence, keeping in mind the dictum of this Court in *Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan* reported in (1997) 11 SCC 121, on that analogy, we propose to issue following directions:

(i) The respondent – Western Railways do immediately issue notices to the occupants of the concerned structures which are falling within the belt which is required immediately for commencing the remaining project work by giving two weeks' time to the concerned occupant(s) to vacate the respective premises;

(ii) In respect of the remaining land owned by Railways, even though it may not be immediately required for the project, similar notice be given to the occupants of structures standing thereon by giving six weeks' time to vacate the respective premises;

(iii) In either case (i) and (ii) above, the notices be issued within one week from today and if the occupants fail to vacate the unauthorized structure, it will be open to the respondent-Western Railways to initiate appropriate action to forcibly dispossess them and to demolish or remove the unauthorized structure(s) by taking assistance of the local police force. The Superintendent/Commissioner of Police of the concerned area shall ensure that adequate police force is deployed on the site and surrounding areas including to provide protection to the officials/staff engaged in the demolition of unauthorized structures and to facilitate them to commence the eviction process and demolition of the unauthorized structures, referred to in the eviction notices on the specified date and time;

(iv) Before commencing the process of eviction and removal of the structures, the Collector of the concerned District must ensure that necessary details about the names and number of persons occupying the concerned structure, including their identity and profile should be duly recorded, which record should be preserved by the Collector for considering the eligibility of those persons for being provided suitable residential accommodation after being evicted owing to proposed demolition action;

(v) The entity, who is the owner of the land, namely, Western Railways in this case as well as the local Government and the State Government shall be jointly and severally liable to pay a sum of Rs. 2,000/- per month per demolished structure for a period of six months from the date of demolition of their structure as ex-gratia amount to the head of the family/occupants of the concerned unauthorized structure removed during demolition action. That amount shall be initially paid by the Collector for a period of six months “only” (not beyond six months each) and shall be later on



shared equally by the entity (owner of the land), local Government and State Government;

(vi) In the event, the local Government has any rehabilitation scheme, the affected persons may apply for being rehabilitated under the said scheme, if eligible and subject to verification of eligibility and complying with all other terms and conditions of the prevalent scheme. The local Government may provide them suitable residential accommodation in lieu of rehabilitation owing to demolition of their structure.

(vii) If no rehabilitation scheme has been formulated by the local Government or is in force, the persons likely to be affected by the action of demolition can apply for allocation of residential premises under the Pradhan Mantri Awas Yojna Scheme, which application be processed not later than six months from the date of its receipt and taken to its logical end, application-wise within such period.

(viii) Be it a case of rehabilitation under clause (vi) or (vii) above, the persons affected by demolition action by the Authorities cannot insist for allotment of alternative residential accommodation at the same place from where they have been evicted (as it is not in situ rehabilitation programme). The eligible persons be allotted accommodation wherever available in the same or even in neighbouring districts.

(ix) In addition, since the Railways have power to initiate civil/criminal action against the unauthorized occupants on the Railway property, must resort to those proceedings against the concerned persons immediately after it is brought to the notice to the concerned official of the Railways.

Further, the Railways being the owner of the property, as also the local Government and State Government must initiate appropriate action against the erring persons, including the officials of the concerned establishment for allowing and tolerating such encroachment and for not taking corrective action of removal of encroachments in right earnest and at the earliest opportunity.

(x) The status report of the action taken by the Railway Board as also by the local Government and State Government be furnished to this Court before the next date.”

11 Superadded, an order passed by a Division Bench of the Allahabad

High Court in **Anoop Kumar Mishra v State of Uttar Pradesh and 8 others**³

was also brought to the notice of this Court, wherein, the order of the Supreme



Court in **Utran Se Besthan Railway Jhopadpatti Vikas Mandal**, *supra*, was adverted to and directions were also issued to remove encroachments from the Railway lands by following the Indian Railways Way and Works Manual.

12 At the cost of repetition, it is as clear as the sky that the Mariamman Temple has been constructed by encroaching the Power House Road, Mariamman Koil Street and the Railway lands. It is not as if the temple has been in existence for centuries on end and the layout was made subsequently. In fact, the temple is right in the middle of Power House Road, as a consequence of which, there is no road for the persons who reside in the northern side extension of the road. If the Railways decide to demarcate their portion, thereby preventing access to anyone, it will be very difficult for the people residing on one end of the Power House Road to reach the other end of the said road. That apart, admittedly, Government offices, godowns and houses are also there in the vicinity and the persons using these premises will be subject to untold suffering to reach the northern and southern ends of the Power House Road.

13 Though the Divisional Railway Manager, Chennai, has been *suo motu* impleaded by us as the fifth respondent, since the place in question comes under Trichy Division of the Railways, it is directed that the fifth respondent and the Divisional Railway Manager, Trichy, shall act in tandem with each other and also the other authorities, *viz.*, the other respondents, and remove the Mariamman Temple and also other encroachments, *viz.*, the houses put up on the Railway



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lands, within a period of six months from the date of receipt of a copy of this order. Needless to state that the directions given by the Supreme Court in **Utran Se Besthan Railway Jhopadpatti Vikas Mandal, supra**, shall be taken as guidelines during the process of removal of encroachments. Further, the temple authorities are at liberty to take the deity(ies) from the temple and reinstall it/them without making any other encroachment, as was made in the present case, as per the established procedure.

14 While carrying out the aforesaid exercise of removal of Mariamman Temple and other encroachments, the respondents shall also adhere to the decision of a Coordinate Bench of this Court, in which, one of us (SVNJ) was a Member, in **N.Sankar v The Principal Secretary, Town and Country Planning, Government of Tamil Nadu and 3 others⁴**, to avoid disciplinary proceedings being initiated against them.

With the above directions and observations, this writ petition stands disposed of. Costs made easy. Connected W.M.P. stands closed.

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

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S. VAIDYANATHAN, J.

and

K. RAJASEKAR, J.

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To

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Villupuram
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- 3 The Commissioner
Villupuram Municipality
- 4 The Tahsildar
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- 5 The Divisional Railway Manager
Southern Railway
Chennai
- 6 The Divisional Railway Manager
Southern Railway
Trichy

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