



W.P(MD)No.12892 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.06.2024

CORAM :

**THE HON'BLE MR.R.MAHADEVAN, ACTING CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.P(MD)No.12892 of 2024

A.Balasubramanian

... Petitioner

vs.

1. The Divisional Engineer,
Highways Department,
Construction and Maintenance,
Virudunagar District.

2.The Assistant Divisional Engineer,
Highways Department,
Construction and Maintenance,
Virudhunagar District.

3.The Thasildar,
Thasildar Office,
Virudhunagar Taluk,
Virudhunagar District.

4.The Commissioner,
Virudhunagar Corporation,
Virudhunagar District.

5.Shri Maruthoor Ayyanar Kovil Trust,
Represented by its Trustee,
Virudhunagar.

6.Muneeswari

... Respondents



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Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 4 to remove the encroachments made by the fifth and sixth respondents in T.S.Nos.464 and 462/2 in Ward No.4, Virudhunagar Taluk, Virudhunagar Town and District based on the representation sent by the petitioner dated 24.05.2024 within the stipulated time fixed by this Honble Court.

For Petitioner : Mr.R.Rajamohan

For R1 to R5 : Mr.N.Satheesh Kumar
Additional Government Pleader

ORDER

R.MAHADEVAN, A.C.J.
AND
G.R.SWAMINATHAN, J.

Heard the learned counsel for the writ petitioner and the learned Additional Government Pleader for the official respondents. Considering the nature of the relief prayed for, issuance of notice to the 6th respondent is dispensed with.

2. It is seen that the 6th respondent herein had earlier filed W.P(MD)No.21383 of 2023, challenging the eviction order dated 17.08.2023 passed by the Highways Department. The writ petition



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was disposed of in the following terms:

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"2. The case of the writ petitioner is that the respondent has initiated action for removal of encroachment in a property of State Highways in S.No.462/2 in Narikudi-Parthibanoor Road and passed an order to remove encroachment on or before 13.07.2023. It is seen that a show cause notice was issued to one Sri Maruthur Ayyanaar Kovil Temple represented by its Trustee earlier by the respondent under Section 28(2) of State Highways Act. The petitioner claims tenancy under the temple in respect of the property in T.S.Nos.460/1 and 460/3. Stating that the temple has not come forward to remove the encroachment, by the impugned notice, the respondent has again directed the temple to remove the encroachment. By the impugned order, the respondent informed that the encroachment will be removed, in case the temple does not come forward to remove the same before 30.08.2023. Admittedly, the petitioner has no claim in respect of the property measuring to an extent of 31.5 sq.mtr in S.No.462/2. The grievance of the petitioner is that the respondent may interfere with his right as a tenant, which is in respect of the property in T.S.Nos. 460/1 and 460/3. The petitioner has no grievance, if the encroachment is removed from the Highways which is in S.No.462/2.

3. In the said circumstances, this Writ petition is closed with an observation that the respondent may proceed to remove encroachment, if the process of removal of encroachment is confined only to the property in S.N.462/2. It is to be noted that the petitioner has obtained lease of some property belong to the temple which is located in T.S.Nos.460/1 and 460/3. It is seen that the portion of the property in T.S.Nos.460/1 and 460/3 has also been acquired for the purpose of formation of road. However, if the encroachment is in respect of T.S.Nos.460/1 or 460/3, it is open to the State Highways to initiate fresh proceedings, if the encroachment is in the public road. No costs. Consequently, connected miscellaneous petition is closed."

3. The grievance of the petitioner is that even though the encroachment is very much there in Survey Nos.464 and 462/2, no action has been taken.



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4. We direct the 2nd respondent to take action on the petitioner's representation dated 24.05.2024. If there is encroachment of Highways' land as alleged by the petitioner, it is the duty of the 2nd respondent to cause its removal. This exercise shall be completed by the 2nd respondent as expeditiously as possible. We make it clear that due process of law shall be observed.

5. The Writ Petition is disposed of accordingly. No costs.

[R.M.D., A.C.J.] & [G.R.S., J.]
18.06.2024

Index : Yes / No
Neutral Citation : Yes / No
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