
(2013) 02 MAD CK 0132

In the Madras High Court

Case No : Writ Petition No. 3069 of 2008 and M.P. No. 1 of 2008

S. Mabubi

APPELLANT

Vs

State of Tamilnadu and Others

RESPONDENT

Date of Decision : 13-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 3 MLJ 261

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : R. Prasad, for the Appellant; R. Ravichandran, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The petitioner has invoked the extraordinary equitable jurisdiction of this Court under Article 226 of the Constitution of India with the prayer for issuance of a Writ in the nature of Certiorari, to quash the notice/order of the 5th respondent vide which the petitioner has been asked to remove the alleged encroachment from the Highways within 7 days of receipt of notice. Affidavit has been sworn by the husband of the petitioner in support of the writ petition wherein it is pleaded that the petitioner and her family members are permanent resident of Odasalpatty Village in Dharmapuri Taluk and District, for the past 50 years. The petitioners are living on the Village Natham land meant for occupation by the Villagers not having habitat of their own.

2. That the petitioner and her mother were assigned the said land by issuance of patta for 95 sq. meter in Survey No. 833/25 (Old Survey No. 833/10B) and 87 Sq. meter in Survey No. 833/26 respectively on 4.12.1991 by the Special Tahsildar, (Natham Land Tax Scheme) Dharmapuri. Both the pieces of lands originally comprised in Survey No. 833/10-B and it was at the time of assignment, this was sub divided. After the death of the mother of the petitioner, she continued to be in possession of the land.

3. In the year 1998, an attempt was made by the Assistant Engineer, Highways Department to evict the petitioner on the allegation that they had encroached upon Highways land. The petitioner therefore brought to the notice of the respondent No. 5 that the petitioner was in possession of the property as owner in pursuance to the assignment. An enquiry was conducted by the third respondent through Village Administrative Officer.

4. That the Village Administrative Officer surveyed the land and gave report stating that land is patta land and that the petitioner has not encroached upon the Highway land. It was on the report of the third respondent that the respondent had dropped proposed proceedings.

5. On 31.10.2007, without any notice, the respondent No. 5 entered on the land of the petitioner and erected a stone pillar showing the part of the land of the petitioner to be encroached. The petitioner again made representation on 5.11.2007 and also paid necessary charges for survey of the land. The third respondent after enquiry, again reported that there was no encroachment. In spite of the report by the respondent No. 3, the impugned notice has been issued directing the petitioner to remove the encroachment from patta land within seven days.

6. Section 28 of Tamil Nadu Highways Act, 2001 reads as under:

25. Prevention of encroachment:-

(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 office concerned before passing final orders.

7. The impugned order is not in consonance with the provisions of Section 28 of the Act. As the competent authority is required to issue show cause notice and given opportunity to the petitioner to raise objection. It is also statutory obligation of the competent authority to pass a detailed speaking order dealing

with the objection filed by the person in possession of the land.

8. The impugned order therefore, on the face of it is arbitrary, as it gives no reason to deal with the objection raised by the petitioner claiming title to the property. The respondents have not placed any order which may have been passed by the competent authority holding the petitioner to be encroacher of the land.

9. The impugned order being in violation of Section 28 of the Tamil Nadu Highways Act, 2001, cannot be sustained.

10. Consequently, this writ petition is allowed. The impugned notice is ordered to be quashed. The respondents shall however, be at liberty to proceed against the petitioner if so advised strictly in accordance with the provisions of Section 28 of the Act, i.e. by giving notice and thereafter by passing detailed speaking order dealing with the objection raised by the petitioner.

Consequently, connected miscellaneous petition is closed.

No cost.