



W.P.Nos.30013, 30025, 30026, 30028, 30029 and 30031 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2025

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CORAM:
THE HONOURABLE MR. JUSTICE M.SUNDAR
and

THE HONOURABLE MR. JUSTICE HEMANT CHANDANGOUDAR

W.P.Nos.30013, 30025, 30026, 30028, 30029 and 30031 of 2024
and

W.M.P. Nos.32723, 32731, 32733, 32734, 32735 & 32737 of 2024

Mumoorthy	Petitioner in W.P.No.30013/2024
Gomathi	Petitioner in W.P.No.30025/2024
C. Madhiyazhagan	Petitioner in W.P.No.30026/2024
Pandian	Petitioner in W.P.No.30028/2024
A. Kumudham	Petitioner in W.P.No.30029/2024
R. Madhiyazhagan	Petitioner in W.P.No.30031/2024
vs.	

1. The District Collector
Cuddalore District
2. The Revenue Divisional Officer
Chidambaram
Cuddalore District
3. The Tahsildar
Bhuvanagiri Taluk
Cuddalore District



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4. The Executive Officer
Boothankudi Panchayat
Chidambaram Taluk
Cuddalore District
 5. The Divisional Engineer
Construction & Maintenance
State Highways Department
Chidambaram Division
Cuddalore District
 6. The Assistant Divisional Engineer
State Highways, Chidambaram Zone
Chidambaram
Cuddalore District
- Respondents in all WPs

Writ Petitions filed under Article 226 of the Constitution of India
praying to issue a writ of certiorari to call for the records relating to
the impugned orders passed by the sixth respondent in Che.Mu.Ka.
No.40/2024EnEEU/dated 16.09.2024 and quash the same.

For petitioner
in all WPs

Mr. S. Senthilnathan

For RR 1 to 6
in all WPs

Mr. T.K. Saravanan
Addl. Government Pleader

For intervenor
in W.P.Nos.30013,
30026 & 30028/
2024

Mr. S. Sarath Kumar

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COMMON ORDER

[made by M.SUNDAR, J.]

This common order will govern the captioned six main 'writ petitions' [hereinafter 'WPs' for the sake of brevity] and the captioned 'writ miscellaneous petitions' [hereinafter 'WMPs' for the sake of brevity] thereat.

2. The entire proceedings are under Section 28 of 'the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)' [hereinafter 'said Act' for the sake of brevity]. The said Act was amended in and *vide* 'the Tamil Nadu Highways (Amendment) Act, 2024 (Act 11 of 2024) with effect from 07.03.2024 and post amendment, Section 28 reads as follows:

'28. Prevention of encroachment.-- (1) The Administrator 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 Administrator or any person authorised by it in this behalf, may--

(i) remove, without any notice, any movable temporary structure, enclosure, stall, booth, any article



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whatsoever hawked, exposed or displayed for sale or any 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.'

3. Mr. S. Senthilnathan, learned counsel on record for writ petitioners, Mr. T.K. Saravanan, learned Additional Government Pleader for respondents and Mr. S. Sarath Kumar, learned counsel for intervenor, are present before us.

4. This Court, with the consent of the aforementioned learned counsel, took up the captioned main WPs and heard out the same.

5. Though myriad points have been raised, we find that the matter turns on a short issue. The short issue is, though the writ petitioners were show caused *vide* show cause notices (SCNs) dated 05.09.2024 as required under Section 28(2)(ii) and though the writ



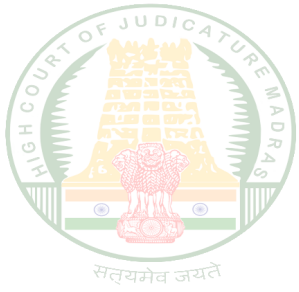
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petitioners responded by producing documents on 13.09.2024, there is no discussion in the impugned orders about writ petitioners' version or the documents produced by the writ petitioners. To be noted, the impugned orders refer that the writ petitioners who are noticees *qua* SCNs have produced documents and the relevant paragraph (both in vernacular as well in English) reads as follows:

'மேற்படி தாங்கள் அளித்த ஆவணங்களின் அடிப்படையில் வருவாய் வட்டாட்சியர், சிதம்பரம் அவர்கள் அளித்த வரைபடம் மற்றும் அறிக்கையினை ஆய்வு செய்ததில் மேற்படி இடம் நெடுஞ்சாலைத் துறைக்கு சொந்தமான இடத்தில் ஆக்கிரமிப்பு செய்யப்பட்டுள்ளது என தெரிய வருகிறது.'

'Further in considering the documents submitted by you and the report and survey sketch submitted by the Tahsildar, Chidambaram, it is found that you have encroached the above land belongs to Highways Department.'

6. Proviso to Section 28(2)(ii) makes it clear that 'any representation' shall be considered 'by authority or officer concerned' before passing 'final orders'. Impugned orders are 'final orders' within the meaning of proviso to Section 28(2)(ii). Representations of writ petitioners made on 13.09.2024 have been adverted to in the impugned orders but not considered. We dislodge the impugned orders on this short point.

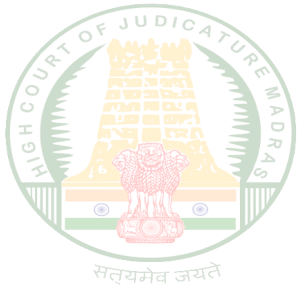


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7. Be that as it may, as the proviso to Section 28(2)(ii) talks about 'any representation', we make it clear that it is open to the intervenor to send a representation within a week from today, *i.e.*, on or before 04.07.2025 and if the intervenor chooses to do so, such representation shall also be considered by the 'authority or officer concerned' before making final orders afresh. We make it clear that if the intervenor does not send a representation within seven days, 'the authority or officer concerned' need not await the representation of the intervenor and can proceed in accordance with law.

8. Before we part with the matter, we find that the impugned orders have been made by R6 (Assistant Divisional Engineer). In the light of amended Section 28, the issue *qua* jurisdiction and competence is left open but we preserve the rights and contentions of the respondents to ensure that the competent authority *qua* amended Section 28 embarks upon the quasi judicial drill *qua* Section 28.



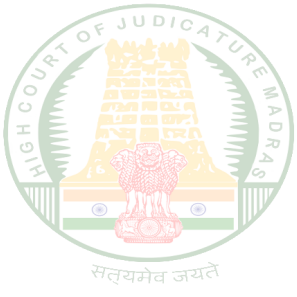
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9. Captioned WPs are allowed, albeit with preservation of rights in the aforesaid manner, with the aforesaid observations and liberty *qua* intervenor. In the light of the impugned orders being dislodged, captioned WMPs become otiose and the same are disposed of as closed. There shall be no order as to costs.

(M.S., J.) (H.C., J.)
27.06.2025

cad
Index: Yes/No
N.C. : Yes/No



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HEMANT CHANDANGOUDAR, J.

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