



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.03.2015
CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

WEB COPY

W.P (MD) No.3401 of 2015
and
M.P. (MD) No.1 of 2015

T.MALARVIZHI

.. Petitioner

Vs.

1. THE DISTRICT COLLECTOR,
DINDIGUL DISTRICT, DINDIGUL.
2. THE ASSISTANT DIVISIONAL
ENGINEER,
NATIONAL HIGHWAYS, DINDIGUL.
3. THE COMMISSIONER,
ODDANCHATHIRAM MUNICIPALITY,
ODDANCHATHIRAM,
DINDIGUL DISTRICT.
4. THE TAHSILDAR,
ODDANCHATHIRAM TALUK
ODDANCHATHIRAM,
DINDIGUL DISTRICT.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records of the impugned notice issued by the 2nd respondent to the petitioner in Memorandum No.Encroachment/2015/E.Ni.Vu dated 12.2.2015 and quash the same as illegal and consequently direct the 2nd respondent to consider the representation of the petitioner dated 16.2.2015.

For Petitioner : Mr.R.R.Kannan

For Respondents : Mr.A.Muthukaruppan
Additional Government Pleader

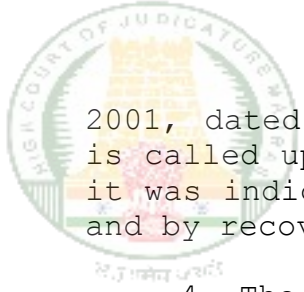
O R D E R

Mr.A.Muthukaruppan, learned Additional Government Pleader takes notice for the respondents.

2. By consent, the writ petition itself is taken up for final disposal.

<https://hcservices.ecourts.gov.in/hcservices/>

3. The petitioner is aggrieved against the notice issued by the second respondent under Section 28(2) of the Tamil Nadu Highways Act,



2001, dated 12.02.2015. Through the said impugned notice, the petitioner is called upon to remove the encroachment within ten days, failing which, it was indicated therein that the same will be removed without any notice and by recovering the damages from the petitioner in that process.

4. The learned counsel for the petitioner submitted that there is no encroachment made by the petitioner and on the other hand, he has made complaint of encroachment made by others. Thus he submitted that the impugned notice issued against the petitioner is vindictive in nature. He would further submit that the petitioner has sent a representation on 16.02.2015 within four days from the date of receipt of the impugned notice and the said representation is still pending for consideration.

5. Perusal of Section 28(2) of the Act would show that the Highways authority may remove any immovable temporary structure, enclosure etc., without any notice. However, proviso to the said Section 28(2) would show that any representation received within the time limit shall be considered by the authority, before passing final orders. Therefore, the representation made by the petitioner on 16.02.2015 within four days from the date of issuance of notice under Section 28(2) of the Act has to necessarily be considered by the authorities concerned and necessary final order is to be passed on merits and in accordance with law. Needless to say that before passing such an order, the petitioner cannot be disturbed.

6. Accordingly, this writ petition is disposed of by directing the second respondent to consider the representation of the petitioner dated 16.02.2015 and pass orders on the same on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order. Till such time, the respondents are directed to maintain status-quo as on today. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/
Assistant Registrar(CRL.SIDE)

/True copy/

sub Assistant Registrar(c.s)

To

1. THE DISTRICT COLLECTOR, DINDIGUL DISTRICT, DINDIGUL.
2. THE ASSISTANT DIVISIONAL ENGINEER, NATIONAL HIGHWAYS, DINDIGUL.
3. THE COMMISSIONER, ODDANCHATHIRAM TALUK
ODDANCHATHIRAM, DINDIGUL DISTRICT.
4. THE TAHSILDAR, ODDANCHATHIRAM MUNICIPALITY, ODDANCHATHIRAM,
DINDIGUL DISTRICT.

+1cc MR.R.R.KAMU, ADVOCATE SR.NO.11627

+1cc to Special Government Pleader, SR.12073

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