

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2016

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.P. No.12925 of 2016 and W.M.P. Nos.11301 and 11302 of 2016

Parasuraman

Petitioner

vs.

Asst. Divisional Engineer (Highways)
Construction and Maintenance
Tambaram Sub Division
Office of Construction and Maintenance
Tambaram, Chennai - 42

Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records pertaining to the impugned notices in No.149/2016-211/Medavakkam/E.Va.Tho.A./dated 15.02.2016, on the file of the respondent and quash the same in respect of the petitioner.

For petitioner	Mr.Neelakandan for M/s.R.Krishnaswamy
For respondent	Mr. G. Sai Baba Govt. Advocate

ORDER

(delivered by SATISH K. AGNIHOTRI, J.)

Mr. G. Sai Baba, learned Government Advocate, accepts notice for the respondent. With consent, the writ petition is taken up for final disposal, at the admission stage itself.

2. This writ petition is filed calling in question, the legality and validity of the impugned notice dated 15 February 2016, whereby and whereunder, the petitioner is directed to remove the encroachment allegedly made by him.

3. According to the petitioner, he is in occupation of his property with residential building and vacant land for a long period and for the purpose of widening the over-bridge, the respondent had issued impugned notice dated 15 February 2016 in

terms of Section 28(2)(ii) of Tamil Nadu Highways Act, 2001 (for short "the Act"), requiring him to surrender vacant possession.

4. The real grievance of the petitioner is that prior to the issuance of the impugned notice dated 15 February 2016 to him, no show cause notice was issued and in this regard, there appears to be a violation of Section 28(2)(ii) of the Act.

5. At this juncture, it is worthwhile to extract the ingredients of Section 28 of the Tamil Nadu Highways Act, 2001, which runs as under:

"28.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 officer concerned before passing final orders."

6. On a perusal of the impugned notice, it is evident that no show cause notice, as contemplated under the relevant provisions of the Act, has been issued to the petitioner. In the impugned notice, there is also no reference of any notice issued prior to the said notice. Thus, the impugned notice be treated as show cause notice, granting two weeks time to the petitioner to submit his response/representation to the authorities concerned. The authorities concerned, on receipt of such response/representation, shall examine the same, adverting

to the issues raised therein and pass appropriate orders. If on examination, it is found that the petitioner has encroached the lands in question, appropriate steps shall be taken for removal of the encroachment within a period of two weeks thereafter.

The writ petition stands disposed of with the above direction and observation. No costs. Consequently, connected W.M.Ps. are closed.
cad

-s/d-

Assistant Registrar (AS)

True Copy

Sub-Assistant Registrar

To

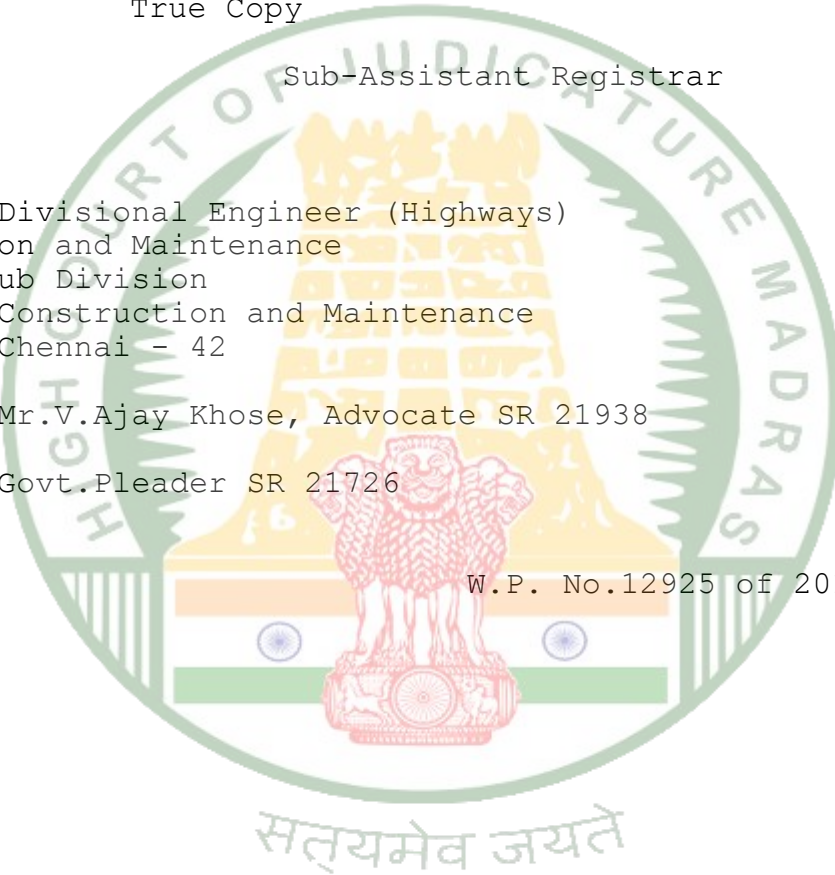
The Asst. Divisional Engineer (Highways)
Construction and Maintenance
Tambaram Sub Division
Office of Construction and Maintenance
Tambaram, Chennai - 42

+ 1 cc to Mr.V.Ajay Khose, Advocate SR 21938

+ 1 cc to Govt.Pleader SR 21726

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