

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 1.11.2016

CORAM

The HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.37848 and 37849 of 2016

S.Arasalingam .. Petitioner
in WP:37848/2016

V.Uma .. Petitioner
in WP:37849/2016

Vs

1. The Divisional Engineer
Tamilnadu Highways Department
(Construction and Maintenance)
Chengelpet Town
Kancheepuram District.

2. The Assistant Divisional Engineer
Tamilnadu Highways Department
(Construction and Maintenance)
Chengelpet Town
Kancheepuram District.

3. The Junior Engineer
Tamilnadu Highways Department
(Construction and Maintenance)
Chengelpet Town
Kancheepuram District.

.. Respondents

PRAYER in W.P.No.37848 of 2016: Petition under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the second respondent dated 14.10.2016 under Section 28(2)(ii) of the Tamil Nadu State Highways Act, 2001, to quash the same as illegal, arbitrary, violative of audi alteram partem and without jurisdiction and further forbear the respondents from

interfering with the petitioner's possession of house sites measuring an extent of 386 Sq.Mtrs. in Old Mahabalipuram Road at Kalavakkam Village, Tiruporur Taluk.

PRAYER in W.P.No.37849 of 2016: Petition under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the second respondent dated 14.10.2016 under Section 28(2)(ii) of the Tamil Nadu State Highways Act, 2001, to quash the same as illegal, arbitrary, violative of audi alteram partem and without jurisdiction and further forbear the respondents from interfering with the petitioner's possession of house sites measuring an extent of 128 Sq.Mtrs. in Old Mahabalipuram Road at Kalavakkam Village, Tiruporur Taluk.

For Petitioners : Mr.V.Raghavachari
For Respondents : Mr.R.Vijayakumar
Addl. Government Pleader
for respondents 1 to 3

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

On hearing learned counsel for parties, it is quite obvious that since the structure sought to be removed is house, the jurisdiction ought to have been exercised under Section 28(2)(ii) of the Tamil Nadu Highways Act, requiring a show cause notice to be issued, but instead, the notice appears to be couched in the language of sub-clause (i), which refers to removal of encroachment, without any notice, and the same is applicable for any movable temporary structure, enclosure, stall, booth, any article, etc.

2. In view of the aforesaid position, the learned counsel for the respondents concedes that this notice should be treated as a notice under Section 28(2)(ii) of the said Act requiring the petitioners to submit response within seven days, which period would be counted from today. On receipt of the reply to the show cause notice by the petitioners, the authorities concerned will proceed in accordance with law and pass necessary orders one way or the other.

The petitions, accordingly, stand disposed of. No costs. Consequently, W.M.P.Nos.32445 to 32448 of 2016 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sasi

To:

1. The Divisional Engineer
Tamilnadu Highways Department
(Construction and Maintenance)
Chengelpet Town
Kancheepuram District.
2. The Assistant Divisional Engineer
Tamilnadu Highways Department
(Construction and Maintenance)
Chengelpet Town
Kancheepuram District.
3. The Junior Engineer
Tamilnadu Highways Department
(Construction and Maintenance)
Chengelpet Town
Kancheepuram District.

Pk (CO)
md (09/11/2016)

W.P.Nos.37848 and 37849 of 2016