

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 2.11.2016
CORAM
The HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.No.38074 of 2016

Kaliammal

.. Petitioner

Vs

1. The Divisional Engineer
Highways Department
(Construction and Maintenance)
Dharmapuri.
2. The Assistant Divisional Engineer
Highways Department
(Construction and Maintenance)
Dharmapuri.
3. The Assistant Engineer
Highways Department
(Construction and Maintenance)
Dharmapuri.

.. Respondents

PRAYER: 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 eviction notice Ku.No.12/2016/U, dated 20.10.2016 of the second respondent, quash the same as illegal and without jurisdiction and consequently, forbear the respondents from evicting the petitioner from her premises in Door Nos.20 (Old No.28), 22 (Old No.29), and 22-A, Inga Goundar Main Road, Morappur Road, Mathikonpalayam, Dharmapuri in her occupation.

For Petitioner : Mr.D.Baskar
for Mr.R.Thamaraiselvan

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 petitioner 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 petitioner, the authorities concerned will proceed in accordance with law and pass necessary orders one way or the other.

The petition, accordingly, stand disposed of. No costs. Consequently, W.M.P.Nos.32630 and 32631 of 2016 are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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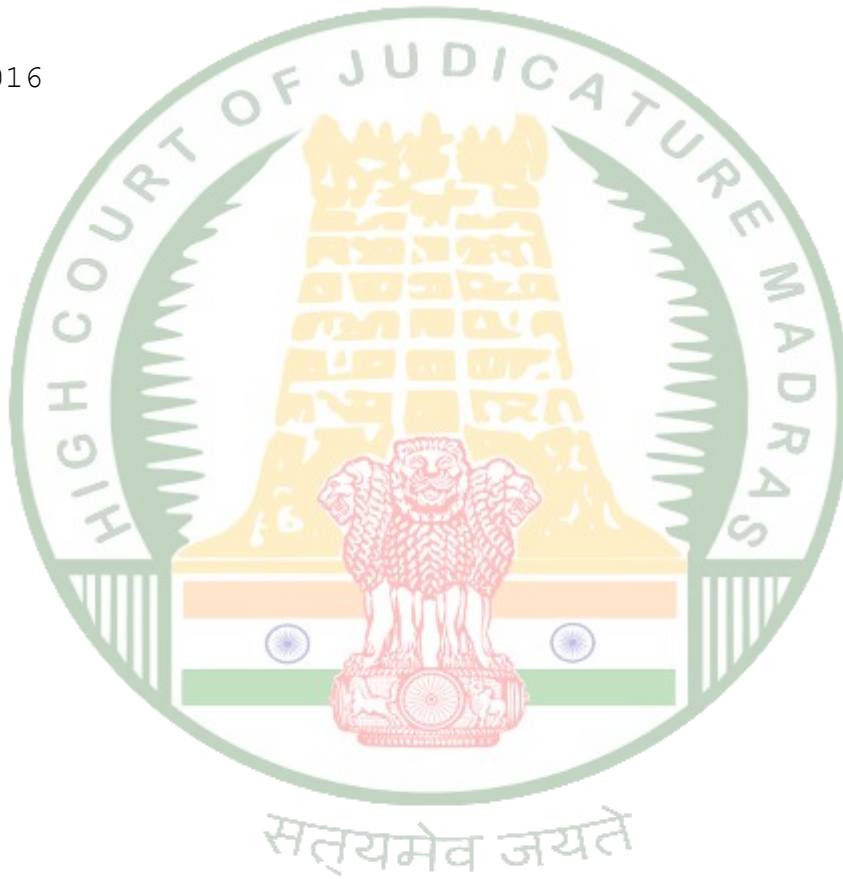
1. The Divisional Engineer
Highways Department
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2. The Assistant Divisional Engineer
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3. The Assistant Engineer
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(Construction and Maintenance)
Dharmapuri.

+1 cc to Mr.R.Thamarai Selvan Advocate sr 62002
+1 cc to Government Pleader sr 62184

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