

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2016

CORAM

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

W.P. No.6189 of 2016
and
W.M.P.No.5529 of 2016

C.Ramachandran

.. Petitioner

Vs.

The Assistant Divisional Engineer,
Highways (Ka & Pa),
Department of Highways,
Government of Tamil Nadu,
Dharmapuri - 636 701.
Dharmapuri District.

.. Respondent

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to Ku.No.12/2015/ENU dated 26.10.2015 on the file of the respondent and quash the same as null, void, arbitrary and illegal and further direct the respondent not to interfere with the petitioner's peaceful possession and enjoyment of his property comprised in D.No.35-C, Inga Main Road, Madhigonpalayam, Dharmapuri, Dharmapuri District.

For Petitioner .. Mr.S.Subramanian

For Respondent .. Ms.A.Srijayanthi,
Spl. Govt. Pleader

ORDER

(Order of the Court was made by SATISH K.AGNIHOTRI, J.)

Ms.A.Srijayanthi, learned Special Government Pleader accepts notice on behalf of the respondent. With the consent of the learned counsel appearing for the petitioner and the learned

Special Government Pleader appearing for the respondent, the writ petition is taken up for final disposal.

2.This writ petition is filed, calling in question, the legality and validity of the impugned notice dated 26 October 2015, 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 the property in question for a long period and alleging that the property is in encroachment of the highways road between Hogenekkal-Pennagaram-Dharmapuri-Tirupattur, the respondent had issued the impugned notice dated 26 October 2015 in terms of Section 28(2) of Tamil Nadu Highways Act, 2001 (for short "the Act"), requiring him to encroachment on or before 30 October 2015.

4.The real grievance of the petitioner is that prior to the issuance of the impugned notice dated 26 October 2015 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.The impugned notice does not disclose as to whether any opportunity of hearing was afforded or show cause notice was issued to the petitioner. However, in the given facts, when the petitioner was served with a notice calling upon him to remove the encroachment on or before 30 October 2015, the petitioner has chosen to file the instant writ petition, after a period of 3 1/2 months on 18 February 2016. In such eventuality, if the notice has already been complied with, no further action is necessary to be taken. If the impugned notice is not complied with, two weeks time is given to the petitioner to put forward his case before the consequential order for removal is passed, if any encroachment is found.

7.With the aforestated observation and direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

mmi

To

The Assistant Divisional Engineer,
Highways (Ka & Pa),
Department of Highways,
Government of Tamil Nadu,
Dharmapuri - 636 701.
Dharmapuri District.

+1 cc to Government Pleader sr.22780/16

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