

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2016

CORAM:

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

W.P. No.7258 of 2016

and

W.M.P. No.6463 of 2016

B. Munusamy @ Muniasamy

... Petitioner

Vs.

1. State of Tamil Nadu
represented by Secretary
Highways Department
Fort St. George
Chennai 600 002

2. The Assistant Divisional Engineer
Highways Department
Construction and Maintenance Department
Tambaram Division
Chennai 600 042

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari, calling for the records relating to the order passed by the second respondent in No.149/2016-168/Medavakkam/E.VA.Tho.A/dated 15.02.2016 and quash the same.

For petitioner : Mr. S. Parthasarathy

For respondents : Mrs. A. Srijayanthi
Special Government Pleader

ORDER

(delivered by SATISH K. AGNIHOTRI, J.)

Mrs. A. Srijayanthi, learned Special Government Pleader, accepts notice for the respondents. With consent, the writ petition is taken up for final disposal, at the admission stage itself.

2. This writ petition is filed questioning the legality and validity of the notice dated 15 February 2016 issued by the second respondent purportedly under Section 28(2)(ii) of the Tamil Nadu Highways Act, 2001, on the ground that the said provision contemplates a prior show cause notice before taking any action, however, in the case on hand, the petitioner was not afforded any opportunity of hearing and no show cause notice was ever served on him, before directing him to remove the alleged encroachment within seven days.

3. It is the case of the petitioner that he is in possession of patta for the land in question and a lawful owner of the said property. According to him, on receipt of the impugned notice, he made a representation dated 19 February 2016. Thus, a direction be issued to the authorities to consider his representation, conduct a proper enquiry and then, take necessary action.

4. Per contra, the learned Special Government Pleader pertinently points out that on a perusal of the impugned notice, it does not appear that any show cause notice was given to the petitioner.

5. We have heard the learned counsel for the parties and perused the pleadings and documents appended thereto.

6. On a bare perusal of the impugned notice, it is manifest that there is no reference of any show cause notice issued earlier nor there is any indication therein to the effect that the petitioner was afforded an opportunity of hearing. Thus, we are inclined to treat the impugned notice as show cause notice. Since the petitioner has already submitted his reply to the impugned notice, he may be afforded an opportunity of personal hearing, if he so desires and consequential action be taken thereafter on merits and in accordance with law, within a period of three weeks. Needless to state that on proper enquiry, if it comes to light that there is an encroachment, as alleged in the impugned notice, the authorities are competent to take immediate steps for removal of the said encroachment.

The writ petition stands disposed of with the above direction and observation. Costs made easy. Connected W.M.P. is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cad

To

1. The Secretary, Highways Department
Government of Tamil Nadu
Fort St. George
Chennai 600 002
2. The Assistant Divisional Engineer
Highways Department
Construction and Maintenance Department
Tambaram Division
Chennai 600 042

+lcc to Mr.S. Parthasarathy, Advocate, S.R.No.12906
+lcc to the Government Pleader, S.R.No.12676

W.P. No.7258 of 2016

SKV(CO)
CA(07/03/2016)



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