

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2016

CORAM:

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

W.P. Nos.9766 to 9769 of 2016
and
W.M.P. Nos.8755 to 8762 of 2016

Soundari @ Gnana Soundari	Petitioner in WP No.9766 of 2016
Sandhasugumaran	Petitioner in WP No.9767 of 2016
Parama Das	Petitioner in WP No.9768 of 2016
Ganesan	Petitioner in WP No.9769 of 2016

Vs.

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

Respondent in all the W.Ps

Writ Petitions 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.149/2016-203/Medavakkam/E.Va.Tho.A./dated 15.02.2016, No.149/2016-205/Medavakkam/E.Va.Tho.A./dated 15.02.2016, No.149/2016-159/Medavakkam/E.Va.Tho.A./dated 15.02.2016 and No.149/2016-208/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.R.Neelakandan
for M/s.R.Krishnaswamy
in all the W.Ps

For respondent : Mrs.A.Srijayanthi
Spl. Govt. Pleader in all the W.Ps

COMMON ORDER

(delivered by SATISH K. AGNIHOTRI, J.)

Mrs. A. Srijayanthi, learned Special Government Pleader,

accepts notice for the respondent. With consent, the main writ petitions are taken up for final disposal, at the admission stage itself.

2. These writ petitions are filed calling in question, the legality and validity of the impugned notices dated 15 February 2016, whereby and whereunder, the petitioners are directed to remove the encroachments allegedly made by them.

3. According to the petitioners, they are in occupation of their respective properties with residential building and vacant land for a long period and for the purpose of widening the overbridge, the respondent had issued impugned notices dated 15 February 2016 in terms of Section 28 (2)(ii) of Tamil Nadu Highways Act, 2001 (for short "the Act"), requiring them to surrender vacant possession.

4. The real grievance of the petitioners is that prior to the issuance of the impugned notices dated 15 February 2016 to them, no show cause notices were 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 notices, it is evident that no show cause notice, as contemplated under the relevant provisions of the Act, has been issued to the petitioners. In the impugned notices, there is also no reference of any notice issued prior to the said notices. Thus, the impugned notices be treated as show cause notices, granting two weeks time to the petitioners to submit their response/representation to the authorities concerned. The authorities concerned, on receipt of such response/representation, shall examine the same, advertent to the issues raised therein and pass appropriate orders. If on examination, it is found that the petitioners have encroached the lands in question, appropriate steps shall be taken for removal of the encroachments within a period of two weeks thereafter.

7. The writ petitions stand disposed of with the above direction and observation. No costs. Consequently, connected W.M.Ps. are closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

cad

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.Ajaykhose, Advocate, sr.16775

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