



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.03.2017
CORAM

THE HON'BLE MR.JUSTICE A.SELVAM
and
THE HON'BLE MR.JUSTICE N.AUTHINATHAN

W.P(MD) Nos.1738 & 1739 of 2017
and
WMP(MD) Nos.1416 & 1417 of 2017

M.Nallathambi ... Petitioner in WP(MD)No.1738/17

N.Santhoshkumar ... Petitioner in WP(MD)No.1739/17

-vs-

The Commissioner,
Madurai Corporation,
Madurai.

... Respondent in both WPs.

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to the proceedings of the respondent in Na.Ka.No.Ma4/A12/000402/17 dated 25.01.2017 and quash the same.

For Petitioners : Mr.M.Gururaj
(both writ petitions)

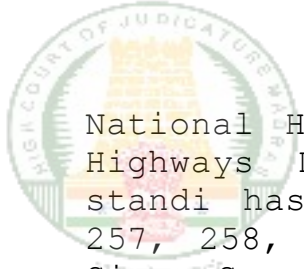
For Respondent : Mr.R.Murali
(both writ petitions)

O R D E R

[Order of the Court was made by **A.SELVAM, J.**]

These Writ Petitions have been filed under Article 226 of the Constitution of India praying to call for records relating to the notices dated 25.01.2017 passed in Na.Ka.No.Ma4/A12/000402/17 by the respondent and quash the same by way of issuing a Writ of Certiorari.

2.The learned counsel appearing for the petitioner has contended that in the counter filed by the respondent it has been clearly mentioned that Survey No.169/1 has been classified as a



National Highways and the same is under the management of State Highways Department. But the respondent without having locus standi has issued the impugned notices under Sections 236, 256, 257, 258, 471, 472, 473 and 503 of the Madurai Corporation Act. Since Survey No.169/1 does not belong to Madurai Corporation, the impugned notices are totally illegal and therefore, the same are liable to be quashed.

3.The learned Standing Counsel appearing for the respondent has repeatedly contended to the effect that in Suo Motu W.P(MD) No.19777 of 2016, this Court has directed to remove all encroachments which are in existence in road margin and since the encroachments made by the petitioners are in existence in road margin, the impugned notices have been issued under the Madurai Corporation Act and therefore, the relief sought in the Writ Petitions cannot be granted.

4.As rightly pointed out on the side of the petitioners, in paragraph - 3 of the counter filed on the side of the respondent, it has been clinchingly stated to the effect that Survey No.169/1 has been classified as National Highways and the same comes within the contour of State Highways Department. But the respondent has issued the impugned notices under the Madurai Corporation Act. On the basis of the counter filed on the side of the respondent, this Court can easily deduce that the respondent is not having control over Survey No.169/1 and the same has been classified as National Highways. Therefore, the State Highways Department is the competent authority to take appropriate proceedings.

5.Since the respondent has no locus standi to issue the impugned notices and since the State Highways Department is having power to remove the alleged encroachments made by the petitioners, this Court is of the view that the notices dated 25.01.2017 are totally illegal and the same are liable to be quashed.

6.In fine, these Writ Petitions are allowed without cost. The impugned notices dated 25.01.2017 passed by the respondent in Na.Ka.No.Ma4/A12/000402/17 are quashed. Consequently, WMP(MD) Nos.1416 & 1417 of 2017 are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar



To
The Commissioner,
Madurai Corporation,
Madurai.

+1cc to Mr.R.Murali, Advocate, Sr No.15363
+1cc to Mr.M.Gururaj, Advocate, Sr No.15402

W.P(MD) Nos.1738 & 1739 of 2017
and
WMP(MD) Nos.1416 & 1417 of 2017
16.03.2017

mj
MS/SV.MMS/SAR.3/20.03.2017/3P.4C