



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

AND

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD) No.20488 of 2017

and

W.M.P (MD) No.16761 of 2017

M.Aadaikkan

: Petitioner

.vs.

The Assistant Divisional Engineer,
(Construction and Maintenance),
State Highways,
Melur,
Madurai District.

: Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorari calling for the records relating to the impugned order passed by the Respondent in his proceedings Na.Ka.No.7/2017/A1/ dated 02.11.2017 and quash the same as illegal and arbitrary.

For Petitioner

: Mr.B.Saravanan

For Respondent

: Mr.M.Govindan,

Special Government Pleader

O R D E R

[Order of the Court was made by **M.VENUGOPAL, J.**]

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in calling for the records relating to the impugned order passed by the Respondent in his proceedings Na.Ka.No.7/2017/A1/dated 02.11.2017 and quash the same as illegal and arbitrary.

2.Heard both sides. No counter-affidavit is filed on behalf of the Respondent.

3.By consent, the main Writ Petition itself is taken up for final disposal.

4.According to the Petitioner, 49 years ago, he had set up a Tea Shop at the side of State Highways Road between Melur - Samuthirapatti and Sekkipatti at Kesampatti Revenue Village. The said Barber Shop is the only source for the petitioner to eke out his livelihood. The entire family is dependent upon the revenue from the Barber Shop. There is no



other source of revenue for him. The said Tea Shop is in existence for about 49 years so far and it has not caused any hindrance to the vehicular traffic.

5. The grievance of the Petitioner is that all of a sudden, the Respondent/Assistant Divisional Engineer, (Construction and Maintenance), State Highways, Melur, Madurai District, had issued order in Ku.No.9/13/A2 dated 30.09.2013, wherein it was mentioned that he is running a Tea Shop on the Highways Poramboke Land. Therefore, he has to remove the said encroachment within a period of seven days from the date of receipt of the order viz., on or before 09.10.2013.

6. At this stage, the Learned Counsel for the Petitioner brings it to the notice of this Court that the Petitioner filed W.P(MD)No.16646 of 2013 on earlier occasion and Division Bench of this Court had passed a final order directing the Petitioner to submit his explanation for the notice dated 30.09.2013 within a period of thirty days. Further, on submission of such explanation, the Respondent was directed to consider the same and pass appropriate orders in accordance with the provisions of the Tamil Nadu Highways Act, 2001.

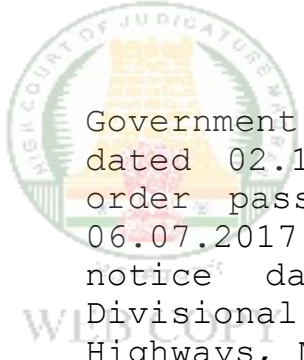
7. In obedience of the directions issued by the Division Bench of this Court in W.P(MD)No.16646 of 2013 dated 08.10.2013, the Petitioner submitted his explanation dated 11.10.2013 through speed post. It appears that no order has been passed by the Respondent till date based on his explanation dated 11.10.2013.

8. The Learned Counsel for the Petitioner brings it to the notice of this Court one K.Mani projected a Writ Petition(MD) No.20300 of 2013, seeking for necessary directions being issued to the Respondent herein to remove an encroachment caused by four Respondents therein including the Petitioner in the present Writ Petition(MD)No.20488 of 2017 blocking entry to his property on eastern side situated at Survey No.62/7B covered by Patta No.3265, Kesavampatti Village, Melur Taluk, Madurai District and this Court, on 06.07.2017 had directed the Respondent therein to consider and dispose of the Representation of K.Mani dated 06.08.2013 on merits, of course, after issuing notice to the Respondents in the said Writ Petition.

9. The Learned Counsel for the Petitioner contends that the Respondent has passed the impugned proceedings dated 02.11.2017 stating that the impugned order has been passed pursuant to the order passed by this Court in W.P(MD)No.20300 of 2013 dated 06.07.2017 in terms of the ingredients of Section 28(ii) of the Tamil Nadu Highways Act, 2001, for removal of encroachment ~~caused by him upon the Highways Land etc.~~

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10. Per contra, it is the submission of the Learned Special

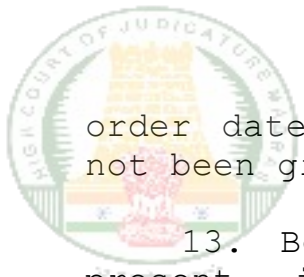


Government Pleader for the Respondent that the impugned notice dated 02.11.2017 was issued to the Petitioner pursuant to the order passed by this Court in W.P(MD)No.20300 of 2013, dated 06.07.2017 and as such, there is no infirmity in the impugned notice dated 02.11.2017 issued by the Respondent/Assistant Divisional Engineer, (Construction and Maintenance), State Highways, Melur, Madurai District.

11. At this juncture, this Court records and recollects the common order dated 08.10.2013 passed in W.P(MD)Nos.16645 to 16648 of 2013 (between P.Kattandi and three others vs. the Assistant Divisional Engineer, State Highways, Melure, Madurai District) wherein at Paragraph No.5, it is observed as under:

5. In view of the submissions made by the learned counsel appearing on behalf of the petitioners, as well as the learned Special Government Pleader appearing on behalf of the respondent and on a perusal of the records available, we are of the considered view that it would be appropriate to permit the petitioners to submit their explanations to the impugned notices, dated 30.09.2013, within a period of seven days from today. On submission of such explanations, by the petitioners, the respondent shall consider the same and pass appropriate orders thereon, in accordance with the provisions of the Tamilnadu Highways Act, 2001. However, if the petitioners fail to submit their explanations, as directed by this Court, it would be open to the respondent to initiate appropriate action against the petitioners, to remove them from the premises in question, as per the provisions of the Tamilnadu Highways Act, 2001.

12. From the aforesaid common order dated 08.10.2013 in W.P (MD)Nos.16645 to 16648 of 2013, it is crystalline clear that the Assistant Divisional Engineer, State Highways, Melur, Madurai District, on submission of explanation by the petitioners concerned, was directed to consider the same and pass appropriate orders thereon in accordance with the provisions of the Tamil Nadu Highways Act, 2001. However, a rider was issued to the effect that if the Petitioners thereon failed to submit their explanations as directed by this Court and an option was given to the Respondent to initiate appropriate action against the Petitioners thereon to remove them from the premises in question as per the provisions of the Tamil Nadu Highways Act, 2001. Obviously, the common order dated 08.10.2013 in W.P(MD)No.16645 to 16648 of 2013(filed by the present Writ Petitioner as the Petitioner in W.P(MD)No.16646 of 2013 etc.,) has not been followed in true letter and spirit by the Respondent and in effect, the earlier Division Bench common



order dated 08.10.2013 in W.P(MD)Nos.16645 to 16648 of 2017 has not been given a complete quietus by the Respondent.

13. Be that as it may, considering the fact that in the present impugned notice dated 02.11.2017 issued by the Respondent/Assistant Divisional Engineer(Construction and Maintenance), State Highways, Melur, Madurai District, the Petitioner was directed to submit his objection with necessary records and only on 09.11.2017, the deadline of one week comes to an end. Therefore, this Court without traversing upon the merits of the subject matter in issue and not delving deep into the same, in the interest of justice, directs the present Writ Petitioner to submit his explanation before the Respondent, within a period of two weeks from the date of receipt of a copy of this order. Soon after the receipt of explanation from the Petitioner within the time adumbrated by this Court, the Respondent is directed to look into the said Representation/Objections of the Petitioner in all seriousness and earnestness and to pass necessary speaking orders, on merits, of course, after providing necessary opportunity to the Petitioner and others concerned by adhering to the principles of natural justice, by issuing necessary notice. It is open to the Petitioner to raise all factual and legal pleas before the Respondent and also the Petitioner is given liberty to point out the earlier common order passed by the Division Bench of this Court in W.P(MD)Nos.16645 to 16648 of 2013 dated 08.10.2013 and to take advantage of the same to his benefit at the optimum level.

14. It cannot be gainsaid that the Respondent shall pass a detailed qualitative and quantitative final order after analysing the pros and cons in the subject matter in issue and the said order is to be passed in an Impartial, Unbiased, Free, Just and also in an Unbiased manner, within a period of four weeks thereafter.

15. Before parting with the case, this Court makes it abundantly clear that till the date of passing of final orders by the Respondent, the possession of the Petitioner in the subject land, shall not be disturbed by anyone in any manner whatsoever.

16. With the above said observation(s) and direction(s), the Writ Petition stands disposed of. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (RTI)



To

The Assistant Divisional Engineer,
(Construction and Maintenance),
State Highways,
Melur,
Madurai District.

+ 1 CC TO MR.B.Saravanan, ADVOCATE IN SR No.86019
pm
MK/SKN RSK/SAR-4/14.11.2017/5P/3C

ORDER MADE IN
W.P. (MD) No.20488 of 2017
07.11.2017