



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.07.2017
CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.3401 of 2017
and
W.M.P.(MD)No.2771 of 2017

Dr.Sankara Venkatesan

.. Petitioner

Vs.

The Assistant Divisional Engineer
Highway KA (MA) PA,
Rathapuram,
Tirunelveli District.

.. Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the impugned notice கு.எண்.1/சுக் கிரமீப் ப், /2016-17/உ.கோ.பொ.நாள்.21.02.2017 and quash the same.

For petitioner
For respondents

: Mr.R.Anand
: Mr.T.S.Mohamed Mohideen
Additional Government Pleader
: Mr.B.Balachander
Advocate Commissioner

O R D E R

[Order of the Court was made by G.R.SWAMINATHAN, J.]

The Writ Petitioner is running a scan centre in Valliyoor. He has been issued with the impugned order dated 21.02.2017 calling upon him to remove the encroachment in question.

2. The Writ Petitioner would contend that the impugned order had been passed straightaway and it was not preceded by any show cause notice.

3. This Court appointed an Advocate Commissioner and he has also submitted a report dated Nil. This Court went through the said report. Para No.8 of the said report reads as follows:



"8. I humbly submit that the physical building in the subjected portion in Survey No.2295/3 where the scan centre is functioning is totally constructed by occupying entire areas. After the survey, it has been identified that approximately to the extent from 40 to 45 sq.mts (46 sq.ft) area has been encroached in the highway road situated in Survey No.2295/4 on the extreme end portion of the north-west corner of the building. It is also necessary to mention here that since the encroached area falls within the built up area of the scan centre on the north-west corner of the building, the Head Surveyor and other authorities were unable to survey the exact extent of the encroachment area. But, the encroached area covered approximately to the extent of 40 to 45 (46 sq.ft) sq.mts."

4. Since the order impugned in the Writ Petition suffers from the violation of the principles of natural justice, we deem it fit to dispose of the Writ Petition, treating this impugned order as notice.

5. The Writ Petitioner shall submit his explanation on or before 02-August-2017. On receipt of the said representation, the respondent shall measure the property, after issuing notice to the Writ Petitioner. Thereafter, the respondent shall pass final orders. The entire exercise shall be completed on or before 31-August-2017. The Writ Petitioner is directed to pay a further sum of Rs.10,000/- (Rupees Ten Thousand Only) towards additional remuneration to the Advocate Commissioner.

6. The Writ Petition is disposed of with the above direction. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

The Assistant Divisional Engineer

Highway KA (MA) PA, Rathapuram, Tirunelveli District.

+One cc to M/s.R.Anand, Advocate, SR.No.66054

ssl/cmr

RL/3C/2P/KK/SAR1/25/7/2017