



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.05.2017

CORAM:

THE HONOURABLE **MR.JUSTICE M.V.MURALIDARAN**
AND
THE HONOURABLE **MR.JUSTICE C.V.KARTHIKEYAN**

W.P. (MD) No. 9486 of 2017
and W.M.P. (MD) No. 7222 of 2017

M.Sesaiya

... Petitioner

Vs.

1.The Divisional Engineer,
Highways Department (Construction & Maintenance),
Ramanathapuram District.

2.The Assistant Divisional Engineer,
Highways Department (Construction & Maintenance),
Mudukulathoor Taluk,
Ramanathapuram District.

3. The Thasildar,
Kadaladi,
Ramanathapuram District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the notice issued by the second respondent in the proceedings in Memo No.16/2017/A2 dated 08.05.2017 and quash the same as illegal and consequently forebear the respondents from any way dispossessing, evicting and demolishing the petitioner's house situated in Survey No:517/3B at S Tharaikudi Village, Mudukulathoor Taluk, Ramanathapuram District without affording opportunities to the petitioner to put forth his case.

For Petitioners : Mr. R.Gandhi

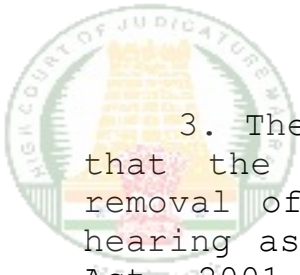
For Respondents : Mr. Rajakarthykeyan

Additional Government Pleader

O R D E R

Mr. Rajakarthykeyan, learned Additional Government Pleader takes notice for the respondents.

2. By consent of parties, the main Writ Petition is taken up for final disposal.



3. The petitioner averred in the affidavit among other things that the second respondent has directly passed an order for removal of encroachment without issuing notice or opportunity of hearing as contemplated under Section 28(2) of Tamilnadu Highways Act, 2001. The petitioner is in possession and enjoyment of the property for more than 50 years and the property was assessed with house tax and electricity connections were given and it is not proper on the part of the respondents to demolish the building as an encroachment without giving an opportunity to the petitioner and therefore, the impugned order is liable to be set aside.

4. Considering the fact that the second respondent has passed the impugned order without issuing notice to the petitioner, which is violation of principles of natural justice, the impugned order passed by the second respondent dated 08.05.2017 is liable to be set aside and the same is set aside. The matter is remanded back to the authorities concerned and the said authorities are directed to give personal opportunity to the petitioners as well as the necessary parties and pass orders on merits and in accordance with law and the said exercise shall be done by the respondents within a period of eight weeks from the date of receipt of copy of this order.

5. In the result, the writ petition is allowed. No costs. Consequently, connected W.M.P.(MD) No.7222 is closed.

Sd/-
Vacation Officer

/True Copy/

Sub Assistant Registrar

To

- 1.The Divisional Engineer,
Highways Department (Construction & Maintenance),
Ramanathapuram District.
- 2.The Assistant Divisional Engineer,
Highways Department (Construction & Maintenance),
Mudukulathoor Taluk, Ramanathapuram District.
3. The Thasildar, Kadaladi, Ramanathapuram District.
+1cc to M/s. R.GANDHI Advocate in SR. No.57272

CM/MR/KM
JS/JC/SAR.3/1.06.2017/2P-5C