

IN THE HIGH COURT OF JUDUCATURE AT MADRAS

Dated: 06.09.2018

Coram:

THE HON'BLE MR.JUTICE M.VENUGOPAL
AND
THE HON'BLE MRS.JUSTICE S.RAMATHILAGAM

W.P.No.22984 of 2018
and
W.M.P.No.26892 of 2018

M.Manokaran Petitioner
vs.

1.State of Tamil Nadu,
rep.by Secretary,
Highways and Minor Ports (HP1)
Department, Secretariat,
Fort St.George,
Chennai-600 009.

2.Divisional Engineer,
Highways (Construction and Maintenance),
Cuddalore,
Cuddalore District.

3.The Assistant Divisional Engineer,
Highways Department,
(Construction and Maintenance)
Kurinjipadi,
Cuddalore District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari calling for the records of the first Respondent in his Proceedings in Letter No.8070/HP1/2018-1, dated 23.08.2018 and quash the same.

For Petitioner : Mr.A.Muthukumar
For Respondents :Mr.J.Pothiraj,Spl.G.P.

ORDER

(Order of the Court was made by M.VENUGOPAL,J.)

Heard the Learned Counsel for the Petitioner and the Learned Special Government Pleader for the Respondents.

2.No counter is filed on behalf of the Respondents.

3.The Petitioner is assailing the Impugned Letter of the First Respondent bearing No.8070/HP1/2018-1, dated 23.08.2018, in the present Writ Petition on the ground that he was not provided with a requisite opportunity of hearing and as such, the Impugned Letter dated 23.08.2018, is liable to be set aside.

4.The Learned Counsel for the Petitioner proceeds to point out that the First Respondent, while dismissing the Revision Petition dated 18.06.2018, (preferred by the present Writ Petitioner), had not borne in mind that the copies of the Reports of some officials, upon which reliance was placed, were not furnished to the Petitioner. In short, it is the plea of the Petitioner that the non-furnishing of Reports of the concerned Officials to him, vitiates the Impugned Proceeding dated 23.08.2018.

5.At this juncture, this Court, on going through the Impugned Proceeding, dated 23.08.2018, of the First Respondent, finds that the following observations are made therein.

"2.The Revision Petition has been examined with all materials and evidences produced, along with the detailed report of the Revenue authorities, and Chief Engineer (Construction and Maintenance) in the matter which clearly confirm the encroachment on Highways Lands."

and ultimately the Revision Petition, preferred by the Writ Petitioner, was held to be not maintainable either in Law or on facts and the same was dismissed.

6.In this connection, it is worthwhile for this Court to make a pertinent mention about the ingredients of Section 55 of the Tamil Nadu Highways Act, 2001, which runs as under:

"55.Power of Government to Call for records and pass orders-(1)The Government may, of their own motion or on an application, call for and examine the record of any authority or officer in respect of any proceedings, the correctness,legality or propriety of any decision, taken or order passed therein, and if in any case, it appears to the Government that any such decision or order should be modified, revised, annulled,

reversed or remitted for reconsideration, they may pass order accordingly.

(2) No application to the Government for the exercise of their power under Sub-Section (1) shall be made-

(a) in respect of any proceeding of any authority or officer of any decision taken or order passed in any such proceeding unless an appeal had already been preferred in respect of such proceeding, decision or order under this Act and such appeal had been disposed of, and

(b) after the expiry of such period as may be prescribed, after the disposal of such appeal.

(3) The Government may suspend the execution of any decision or order pending the exercise of their power under sub-section (1), in respect thereof."

7. A mere running of the eye over the ingredients of Section 55 of the Tamil Nadu Highways Act, 2001, latently and patently indicates that issuance of notice to the 'Concerned Person/Party' is not contemplated. But when an Administrative/Executive Order is passed by the concerned Authority, then that Authority, while exercising his Administrative Powers, is to act judicially.

8. In the instant case, there is no indication in the Impugned Letter, dated 23.08.2018, of the First Respondent that the Petitioner was provided with opportunity of hearing at the time of Revision Petition being heard by the competent Authority. Therefore, it is to be safely concluded that the First Respondent had not examined the subject matter in issue and all materials and evidences produced along with the detailed Reports of Revenue Authorities and Chief Engineer (Construction and Maintenance), which according to him, clearly confirms the encroachment on Highways Lands, and passed the Impugned Proceeding without hearing the Writ Petitioner (Revision Petitioner) and also not taking into account of his version/defence, as the case may be.

9. Be it noted that the Principles of Natural Justice are not the Edicts of a Statute. Even though Section 55 of the Tamil Nadu Highways Act, 2001 does not visualise an opportunity of hearing being provided to the affected/aggrieved concerned, yet, this Court

is of the considered view that the 'Rudimentary Principle of

Natural Justice' enjoins that the First Respondent should have provided an opportunity of hearing to the Petitioner at the time of his hearing of the Revision Petition. Unfortunately, the Writ Petitioner, in the instant case, was not provided with an opportunity to put forth his version/views/defence, as the case may be, in the Revision Petition filed by him. Viewed in that perspective, this Court unhesitatingly holds that the Impugned Proceeding of the First Respondent, dated 23.08.2018, is illegal, besides the same being 'non-est' in the eye of Law. As such, this Court interferes with the Impugned Proceeding of the First Respondent, dated 23.08.2018, and sets aside the same to prevent an 'Aberration of Justice' and in furtherance of substantial cause of justice.

10. In fine, the Writ Petition is allowed. The Impugned Letter dated 23.08.2018, of the First Respondent, is set aside by this Court for the reasons assigned in this order. The first Respondent is directed to hear the Revision Petition dated 18.06.2018, preferred by the Petitioner de novo and further, he is directed to provide an opportunity of hearing to the Petitioner by specifying the time and date of hearing of the Revision Petition. If the Petitioner requires any opportunity to produce necessary documents/relevant records, then the same may be granted by the First Respondent, after bearing in mind the 'Principles of Natural Justice'. It is open to the Petitioner to raise all factual and legal pleas before the First Respondent at the time of hearing of Revision Petition by the First Respondent. It is needless for this Court to make a pertinent mention that the First Respondent shall advert to all the facts and the legal pleas raised by the Petitioner in the Revision Petition and the same shall be adverted to/answered by the First Respondent in a 'Complete and Comprehensive' manner. In any event, the First Respondent is directed to pass necessary final Orders in the Revision Petition of the Petitioner, within six weeks from the date of receipt of copy of this order. Further, the said Order is to be passed by the First Respondent in an unbiased manner and also uninfluenced and untrammelled with any of the observations made by this Court in this Order. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

msk

To

1.The Secretary,
Highways and Minor Ports (HP1)
Department, Secretariat,
Fort St.George,
Chennai-600 009.

2.Divisional Engineer,
Highways (Construction and Maintenance),
Cuddalore,
Cuddalore District.

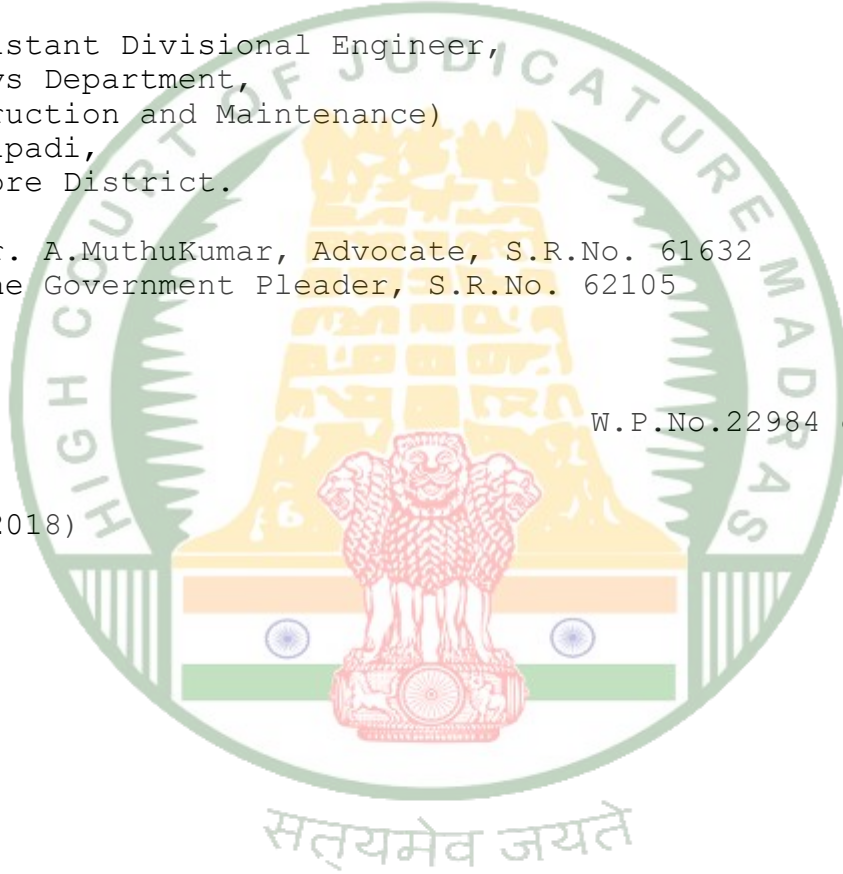
3.The Assistant Divisional Engineer,
Highways Department,
(Construction and Maintenance)
Kurinjipadi,
Cuddalore District.

+1cc to Mr. A.MuthuKumar, Advocate, S.R.No. 61632

+1cc to the Government Pleader, S.R.No. 62105

W.P.No.22984 of 2018

GMR (CO)
GN(19/09/2018)



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