



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

and

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.(MD) Nos.19663 and 19664 of 2018

and

W.M.P.(MD) Nos.17439 and 17441 of 2018

W.P.(MD) No.19663 of 2018:

V.Gunasekaran

... Petitioner

Vs.

The Assistant Divisional Engineer (Highways),
Construction and Maintenance,
Manapparai,
Trichy District.

... Respondent

PRAYER: The writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for records relating to the impugned notice issued by the respondent in his proceedings in Ku.No.449/2013/A2, dated 03.09.2018.

For Petitioner : Mr.B.Prahalad Ravi

For Respondent : Mr.V.R.Shanmuganathan
Special Government PleaderW.P.(MD) No.19664 of 2018:

M.Vengudusamy

... Petitioner

Vs.

The Assistant Divisional Engineer (Highways),
Construction and Maintenance,
Manapparai,
Trichy District.

... Respondent

PRAYER: The writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for records relating to the impugned notice issued by the respondent in his proceedings in Ku.No.449/2013/A2, dated 03.09.2018.

For Petitioner : Mr.B.Prahalad Ravi

For Respondent : Mr.V.R.Shanmuganathan
Special Government Pleader

**COMMON ORDER**

(Order of the Court was made by T.RAJA, J.)

In view of the fact that the issue involved in both the Writ Petitions is one and the same, the Writ Petitions are taken up together and disposed of by a common order.

2. These Writ Petitions are directed against the impugned orders dated 03.09.2018 calling upon the petitioners to remove the encroachments put up by them in Kovilpatti-Manapparai highways on or before 11.09.2018, failing which the respondent would take all steps for removal of the encroachments at the cost of the petitioners.

3. Heard the learned Counsel appearing for the petitioners and the learned Special Government Pleader appearing for the respondent.

4. The learned Counsel appearing for the petitioners assailing the impugned order submitted that the impugned orders ought not to have been issued without prior notice whatsoever. As the petitioners have been doing bakery and tea shop in the name and style of 'Bhavani Iyer Bakery' and 'Shaguntahala Tea and Petty Shop' respectively at Ponmuchanthi nearby Kovilpatti to Manapparai road for more than 50 long years in their own ancestral property for which patta also has been issued by the revenue authorities, the impugned orders ought not to have been issued. Adding further, he would submit that the petitioners have also got Registration Certificates from the Tamil Nadu Food and Safety and Drug Administration Department (Food Safety Wing) for doing the said bakery and tea shop and petty shops respectively and the same have been renewed periodically and now the Registration Certificates are valid upto 2020 which shows the petitioners are carrying on their bakery and tea shop business on their own patta land. Therefore, the impugned orders issued without prior notice are liable to go.

5. After taking time, the learned Special Government Pleader appearing for the respondent produced copies of the show cause notice dated 18.04.2018 issued to the petitioners and the same were acknowledged by the wife of respective petitioners.

6. A perusal of the show cause notices dated 18.04.2018 clearly shows that both the petitioners were duly served and the same were received by the wife of the petitioners namely G. Poongothai and Shagunthala respectively, on 18.04.2018. Therefore, we are fully satisfied with the reply given by the Special Government Pleader with regard to the contention made by the petitioners that the petitioners were not issued with any show cause notice is wholly misconceived. Therefore, both the Writ Petitions are liable to be dismissed.



7.It is at this stage, the learned Counsel appearing for the petitioners sought for 30 days time to make suitable arrangements for removal of bakery shop and tea shop respectively and to shift the same to a different place. As there is a heavy objection from the respondent, we deem it appropriate to grant only two weeks time in stead of 30 days time as sought by the petitioner. Accordingly, the petitioners are given time to vacate their respective shops on or before 26.09.2018. It is made clear that if the petitioners fail to vacate their shops, the respondent shall remove the petitioners with police protection at the cost of the petitioners.

8.The learned Special Government Pleader appearing for the respondent at this stage submitted that apart from these two petitioners, 24 other encroachers were also served with the show cause notice dated 18.04.2018 and they have not vacated. Therefore, liberty is given to the respondent to grant fifteen days time for removal of the encroachment and if they approach the respondent after expiry of fifteen days time, it is open to the respondent to remove the encroachments at the cost of the respective encroachers.

9.In the result, both the Writ Petitions are dismissed. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

The Assistant Divisional Engineer (Highways),
Construction and Maintenance,
Manapparai,
Trichy District.

+2CC to Mr.B.Prahalad Ravi, Advocate, SR.Nos.84004,84005,
+1CC to the Special Government Pleader SR.Nos.84073,84074

W.P. (MD) Nos.19663 and 19664 of 2018
and

W.M.P. (MD) Nos.17439 and 17441 of 2018
11.09.2018

SRM
ES/RP/SAR 3/19.09.2018/3P/5C