



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.10.2018**

CORAM:

THE HONOURABLE MR. JUSTICE **T.RAJA**

and

THE HONOURABLE MR. JUSTICE **KRISHNAN RAMASAMY**

W.P. (MD) No.21274 of 2018

and

W.M.P. (MD) Nos.19113 and 19114 of 2018

S.V.Karuppasamy

... Petitioner

Vs.

1.The District Collector,
Madurai,
Madurai District.

2.The Assistant Divisional Engineer (H),
Projects Sub Division - I,
Highways Department,
Madurai.

... Respondents

PRAYER: The writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 04.10.2018 on the file of the respondent No.2 and quash the same as illegal and consequently for a direction, forbearing the respondent No.2 from evicting the petitioner's building situated in 318-3, Pandian Street, Ward No.30, Melamadai II Bit, Madurai District without conducting survey and without following the procedure as contemplated under Section 14(1),(2) and Section 28 of the Tamil Nadu Highways Act, 2001.

For Petitioner
For Respondents

: Mr.T.Lajapathi Roy
: Mr.C.Ramar
Additional Government Pleader

ORDER

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

This Writ Petition is directed against the impugned order dated 04.10.2018 to remove the encroachment to the extent of 79 sq. mt. in Survey No.5/29 situated in Melamadai II Bit, Madurai East, by the Assistant Divisional Engineer (H), Project Sub Division - I, Highways Department, Madurai, the second



respondent herein calling for the petitioner to remove the encroached sheds/buildings within ten days from the date of issuance of the said notice.

2.The learned Counsel appearing for the petitioner in support of the prayer referring to Section 28 of the Tamil Nadu Highways Act, 2001, submitted that by virtue of Section 28 (2) (ii) of the Act, the authority may remove any immovable structure, whether permanent or temporary in nature, encroaching the highways or in the area vested with Government under this Act, after issuing a show cause notice against such removal giving seven days time from the date of receipt thereof. The same section also provides the alleged encroacher to give a representation and such representation also should be duly considered by the authority or Officer concerned before passing final order. The learned Counsel appearing for the petitioner again referring to an order passed by a Division Bench of this Court in **W.P.No.28531 of 2017 (M.Manokaran vs. The Assistant Divisional Engineer, Highways Department, Cuddalore District and two others)** submitted that this Court also while dealing with the similar issue made it clear that if any order is passed by the authorities in any of the proceedings either under the provisions of the Tamil Nadu Highways Act, 2001 or under Tamil Nadu Land Encroachment Act, 1905, in violation of the principles of natural justice, without giving an opportunity of hearing to the parties including the complainant, if any, the District Collector or any other competent authority is bound to initiate disciplinary action against the person, who passed orders in terms of the said Act. Therefore, when this Court has found any violation of the aforementioned Section 28(2) (ii) of the Tamil Nadu Highways Act, 2001, even to initiate disciplinary proceedings against the erring officer, the impugned order should have been carefully worded and passed in compliance of Section 28(2) (ii) of the Act. A perusal of the impugned order does not reflect either application of mind or not even showing the nature of encroachment put up by the petitioner and the extent of removal of the encroachment. Therefore, the impugned order is liable to go, the Counsel for the petitioner pleaded.

3.The learned Additional Government Pleader appearing for the respondents placing before us a copy of the map showing the area encroached by the petitioner along with a sketch submitted that the petitioner has encroached in Survey No.5/29 to the extent of 79 sq. mt. and this has been identified and after identifying the encroachment, the extent also has been given which has been rightly indicated in the impugned order. As the sketch along with the photograph of the alleged encroachment clearly shows that the encroached portion has been identified but as per the sketch which indicates that 79 sq. mt. has been encroached by the petitioner in Survey No.5/29, the respondent shall proceed to remove the encroachment only to the extent of 79 sq. mt. in Survey No.5/29 in the presence of the petitioner.



4.The petitioner is directed to treat the impugned notice along with the sketch and photograph of the encroached portion as a notice and give his explanation within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the respondents shall consider and pass appropriate order on merits and in accordance with law, within a period of two weeks thereafter.

5.This Writ Petition is disposed of with the above directions. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

1.The District Collector,
Madurai,
Madurai District.

2.The Assistant Divisional Engineer (H),
Projects Sub Division - I,
Highways Department,
Madurai.

+1 CC To MR.T.LAJAPATHI ROY, Advocate SR. NO. 90761

W.P. (MD) No.21274 of 2018

and

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12.10.2018

SRM

TR/RP/SAR-IV(22.11.2018) 3P 4C