



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

AND

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

W.P. (MD)No.26918 of 2019

and

W.M.P. (MD)No.23261 of 2019

Karupasamy

... Petitioner

Vs.

1.The National Highways Authority of India,
CDR & Co., Constructions,
Thirunagar,
Madurai-625 006.

2.The Manager,
Etturvattam Toll Plaza,
Indeerddeep Construction Company,
Sattur,
National Highways Authority of India (NH-7),
Virudhunagar District.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the first respondent in his proceedings No.Nil dated Nil (served to the petitioner on 13.11.2019) and quash the same as illegal, arbitrary, without jurisdiction and violation of Principles of Natural Justice.

For Petitioner : Mr.M.Jothibasu

For Respondents : Mr.C.Arulvadivel @ Sekar

ORDER

[Order of the Court was delivered by **M.DURAI SWAMY, J.**]

The petitioner has filed the above writ petition to issue a writ of certiorari to call for the records of the first respondent in his proceedings No.Nil, dated Nil (served to the petitioner on 13.11.2019) and quash the same.

2. The contention of the petitioner is that the impugned notice was issued to the petitioner by the authority, who has got no jurisdiction.



3. A perusal of the impugned notice, it could be seen that the National Highways Authority of India, CDR & Co Constructions, Madurai had issued the notice to the petitioner for removing the encroachment.

4. As per Section 26(2) of the Control of National Highways (Land and Traffic) Act, 2002, the Highway Administration or the officer authorised by such Administration are empowered to issue notice in respect of unauthorised occupation in a prescribed form on the person causing or responsible for such unauthorised occupation requiring him to remove such unauthorised occupation and to restore such highway land in its original condition as before the unauthorised occupation within the period specified in the notice.

5. When the impugned notice has not been issued as per the provisions of Section 26(2) of the Act, on this ground alone, the impugned notice is liable to be set aside.

6. Mr.C.Arulvadivel @ Sekar, learned Counsel appearing for the first respondent submitted that the impugned notice may be set aside and liberty may be given to the authorities to issue fresh notice in accordance with the provisions of Section 26(2) of the Act.

7. In view of the submissions made by the learned Counsel appearing on either side, the impugned notice served to the petitioner on 13.11.2019 is set aside. Liberty is given to the Highways Authorities to issue notice to the petitioner in accordance with the provisions of Section 26(2) of the Act.

8. With the above observations, the Writ Petition is allowed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Ssl

+1 CC to M/s.G.M.LAW ASSOCIATES, Advocate (SR-105626[F] dated 18/12/2019)

+1 CC to MR.C.ARUL VADIVEL @ SEKAR, Advocate (SR-105795[F] dated 19/12/2019)

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