

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2020

CORAM :

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN  
AND  
THE HONOURABLE MRS. JUSTICE R. HEMALATHA

W.P.No.16497 of 2020  
and  
W.M.P.No.20473 of 2020

Raja Shankara Gurukkal ... Petitioner

Vs.

1.The State of Tamil Nadu,  
Represented by its Secretary,  
Highways and Minor Courts Department,  
Fort St. George,  
Chennai - 600 009.

2.Assistant Divisional Engineer,  
(Buildings and Maintenance),  
State Highways Department,  
Chidambaram,  
Cuddalore Dt.

.... Respondents

Prayer : Writ Petition filed under Article 226 of the  
Constitution of India for issuance of a Writ of Certiorari  
calling upon the records of impugned order of the second  
respondent dated 30.09.2020 and quash the same.

For Petitioner : Mr.A.Mohamed Ismail

For Respondents : Mr.M.Elumalai  
Additional Government Pleader

O R D E R

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

The petitioner claims to be an Archaga of 'Arulmigu  
Shri Veera Shakthi Aanjanayar Temple', situated at  
Keezharathveethi at Chidambaram Town.

2.The learned counsel appearing for the petitioner  
would submit that the devotees, who come to worship Lord  
Nataraja in Chidambaram, also used to come to this temple, and  
it is existing for very many decades and the location of the  
said temple is not in hindrance to free movement of traffic in  
the concerned State Highways. Despite that, the 2<sup>nd</sup> respondent  
has issued the impugned notice, dated 30.09.2020, under

Section 28(2) of the Tamil Nadu Highways Act, 2001. The petitioner, upon receipt of the said notice, has also given detailed response, dated 09.10.2020, however, without adhering to the principles of natural justice, and without considering and disposing of the representation submitted by the petitioner, further action is being taken to remove the temple, and prays for appropriate orders.

3.Mr.M.Elumalai, learned Additional Government Pleader, accepts notice on behalf of the respondents 1 and 2, and would submit that, since action has been taken strictly in accordance with Section 28(2) of the Tamil Nadu Highways Act, 2001, the petitioner is not entitled to make any grievance, and prays for dismissal of the writ petition.

4.It is relevant to extract Section 28 of the Tamil Nadu Highways Act, 2001 :

"28. (1) The Highways authority or any person authorised by it in this behalf shall, at such time as may be considered necessary, conduct such checks and periodical inspection, of the highway boundaries, with the view to ensure the prevention of unauthorised encroachment and the removal of such encroachment.

(2) The Highways authority or any person authorised by it in this behalf, may--

(i) remove, without any notice, any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching the highway or in any area where the construction or development of a highway is undertaken or proposed to be undertaken;

(ii) remove any immovable structure, whether permanent or temporary in nature, encroaching the highway or in the area vested with Government under this Act, after issuing a show cause notice against such removal, returnable within a period of seven days from the date of receipt thereof:

Provided that any representation received within the time limit shall be considered by the authority or officer concerned before passing final orders."

5.In the light of the Proviso (ii) to Sub-Section (2) of Section 28 of the Tamil Nadu Highways Act, 2001, the 2<sup>nd</sup> respondent is directed to consider and dispose of the petitioner's representation, dated 09.10.2020, on merits and in accordance with law and pass appropriate orders, within a period of four weeks from the date of receipt of a copy of this order, and communicate the decision taken to the

petitioner, and till such time, the 2<sup>nd</sup> respondent shall defer further decision in terms of the impugned notice. It is also made clear that the petitioner shall not alter the physical features of the said temple till the consideration and disposal of the representation by the 2<sup>nd</sup> respondent.

This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

sd/-  
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mkn

To

- 1.The Secretary,  
State of Tamil Nadu,  
Highways and Minor Courts Department,  
Fort St. George,  
Chennai - 600 009.
- 2.The Assistant Divisional Engineer,  
(Buildings and Maintenance),  
State Highways Department,  
Chidambaram,  
Cuddalore District.

SDR 14/12/2020

W.P.No.16497 of 2020

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