



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2020

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.P. (MD) .Nos.5563, 5566 and 5574 of 2020
and W.M.P. (MD) .Nos.4875, 4876 and 4881 of 2020

E.Seenivasan	.. Petitioner in W.P.(MD).No.5563 of 2020
E.Jeyaraman	.. Petitioner in W.P.(MD).No.5566 of 2020
R.Natarajan	.. Petitioner in W.P.(MD).No.5574 of 2020

/Vs./

The Assistant Engineer,
Highways Department,
(Construction and Maintenance)
Aravakurichi,
Karur District.

.. Respondent in all petitions

Common Prayer: Writ petitions filed under Article 226 of the Constitution of India for issuance of writ of Certiorari, calling for the records relating to the impugned order passed by the respondent in his proceedings Nil, dated 27.02.2020 and quash the same as illegal and arbitrary.

For Petitioner	: Mr.B.Saravanan
For Respondents	: Mr.V.R.Shanmuganathan Special Government Pleader (in all petition)

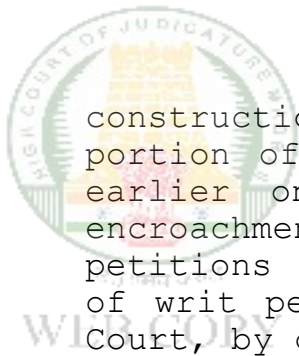
C O M M O N O R D E R

(Order of this court was made by **S.S.SUNDAR, J.**)

All these writ petitions have been filed challenging the order passed by the respondent directing removal of encroachments within 10 days from the date of order.

2.The brief facts that are necessary for the purpose of disposal of these writ petitions are as follows:

The petitioner in all these petitions have put up constructions adjoining the public road, which vests with the State Highways Department. It is stated that the petitioners are in possession as reputed owners of the property by putting up



construction in the portion adjacent to the road. Stating that the portion of road is encroached by individuals, a notice was issued earlier on 14.10.2019 directing the petitioners to remove the encroachments within seven days. The petitioners in all these writ petitions filed writ petitions before this Court earlier in a batch of writ petitions in W.P.(MD).No.23348 of 2019 and batch and this Court, by order, dated 06.11.2019, disposed of the writ petitions in the following lines.

"6.We find that the respondent has issued the impugned notices stating that within seven days encroachments should have been removed. However, this should have been proceeded by an inspection indicating the extent of encroachments. Therefore, we direct the respondent to inspect the entire road stretch after issuing notice to all the persons in occupation of shops, houses etc., on either side of the road and information shall also be given through Public Address System and road margin shall be measured and the encroached portions shall be marked in red colour and all the encroachers be given ten days time to remove the encroachments by themselves, failing which, the same shall be removed departmentally and the cost be recovered from the concerned encroachers.

7.In the light of the above directions, no coercive action should be initiated pursuant to the notice issued by the respondent. Though other persons have not approached this Court, directions issued in this order will apply to them as well and the respondent shall implement the same."

3.After the order of this Court, dated 06.11.2019, it is now admitted before this Court by the petitioner that individual notices were given by the respondent before conducting survey. It is admitted that after issuing a public notice as directed by this Court, the respondent has issued individual notice to every petitioner requesting them to present during survey, to find out whether the Highway's property is encroached by any of the petitioners.

4.It is further admitted by the petitioner that after survey, the respondent has identified the portion which according to them is encroached by each of the petitioner by putting a reg peg mark. It was thereafter, by the impugned communication, dated 27.02.2020, the respondent requested the petitioners and other encroachers to remove the encroachment which are identified by red markings within 10 days. It is also stated that if the petitioners and other encroachers do not remove the encroachment by themselves, it will be removed by the Highways Authorities with the expenses of the



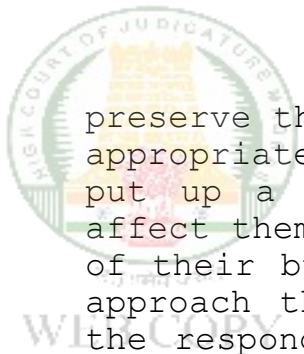
petitioners and other encroachers. The above order by the respondent is challenged in all the present writ petitions.

5.The learned counsel appearing for the petitioners contended that the respondent did not follow the procedure prescribed under Section 28(2) of Tamil Nadu State Highways Act. The petitioners are parties to the earlier order passed by this Court and the procedure directed by this Court appears to be in deviation of Section 28(2) of the Tamil Nadu State Highways Act. This Court find that the order of this Court is binding on the petitioners. Though the petitioners have challenged the previous orders on the ground of violation of principles of natural justice by relying upon Section 28(2) of the Tamil Nadu State Highways Act, this Court considering the rival submissions, directed, the respondent to follow a procedure after conducting the survey in the presence of petitioners in a proper and lawful manner. Though the petitioners have some grievance against the manner in which the survey was conducted, the petitioner has not raised any objection during or immediately after the survey. In such circumstances, it is not appropriate for the learned counsel for the petitioners to express further grievance merely on the ground that the procedure prescribed under section 28 (2) of the Tamil Nadu Highways Act has not been followed. Even before this Court the petitioners are not sure about their stand as to how the survey was improper. It is not their case that the officials have conducted survey ignoring the survey stones and permanent boundary.

6.The petitioners, having allowed the order of this Court in W.P.(MD).No.23348 of 2019 and batch, dated 06.11.2019 to become final, cannot find fault with the procedure followed as per the direction of this Court, which has been followed without any violation. In such circumstances, the impugned order directing the petitioners to remove the encroachment cannot be challenged merely by referring to Section 28. Hence, this Court do not find any merit in the writ petition. However, the petitioners have some grievance about the manner of survey. Since the procedure contemplated in the Tamil Nadu Highways Act is relating to title dispute or boundary dispute which cannot be decided by this Court or the revenue officials, the remedy available to the petitioners is to approach the civil court for appropriate relief.

7.Hence, these writ petitions are dismissed. However liberty is given to the petitioners to approach the civil court to establish that the survey conducted by the respondents pursuant to the direction of this Court is not proper and that the petitioners are entitled to get a declaration of his title to the entire land in which the construction of the petitioners stand as on date. No costs. Consequently, connected miscellaneous petitions are closed.

8.The learned counsel for the petitioners seeks reasonable time to approach the civil court and to



preserve the status quo till such time they move the civil court for appropriate relief. Considering the fact that the petitioner has put up a residential house and any demolition would permanently affect them and the petitioners are likely to lose the front portion of their building four weeks time is granted to the petitioners to approach the civil court for appropriate remedy. Till such time, the respondent is directed to maintain status quo. When a suit is filed by the petitioners, the same will be decided on merits uninfluenced by any of the observations made by this court in these writ petitions or by the decision of the respondents on the basis of survey.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

TM

To

The Assistant Engineer,
Highways Department,
(Construction and Maintenance)
Aravakurichi,
Karur District.

+3 CC to M/s.B.SARAVANAN, Advocate (SR-12332[F] dated 18/03/2020)
+1 CC to SPL GP (SR-12265[F] dated 18/03/2020)

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