

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.Nos.2408, 2410, 2414, 2416 and 2417 of 2021

and

WMP.Nos.2714, 2716, 2718, 2724 and 2726 of 2021

[Video Conferencing]

Natarajan .. Petitioner in WP.No.2408/2021
Padmanaban .. Petitioner in WP.No.2410/2021
Kuppan .. Petitioner in WP.No.2414/2021
Pillayar .. Petitioner in WP.No.2416/2021
Elumalai .. Petitioner in WP.No.2417/2021

Versus

The Assistant Divisional Engineer
Highways Department, Construction
and Maintenance Office,
Arcot, Vellore.

.. Respondent in all the
Writ Petitions

Common Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records in Notice Nos.323[73]/2020/ENiOo, 323[54]/2020/ENiOo, 323[72]/2020/ENiOo, 323[32]/2020/ENiOo, 323[31]/2020/ENiOo, , dated 29.12.2020 on the file of the respondent and quash the same.

For Petitioners in all
Writ Petitions : Mr.E. Raj Thilak

For Respondent in
all Writ petitions :Mr.V.Anandamurthy
Additional Government
Pleader

COMMON ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

- (1) By consent, all the writ petitions are taken up for final disposal and are disposed of by this common order since the issue to be adjudicated is one and the same.
- (2) Mr.V.Anandamurthy, learned Additional Government Pleader accepts notice on behalf of the respondent in all Writ Petitions.
- (3) Mr.E.Raj Thilak, learned counsel for the petitioners in the above writ petitions would submit that under the garb of removal of the alleged encroachment on the road margin, in exercise of powers under Section 28[2] of the Tamil Nadu State Highways Act, 2001, the impugned Show Cause Notices came to be issued without disclosing the exact details of the encroachment and that apart, a pre-determination of mind is also exhibited in the light of the contents of the said Notices. It is the further submission of the learned Senior counsel that in response to the Notices, individual representations have also been submitted by the petitioners and since the petitioners are eking out their livelihood by running small shops and that they also suffered very much on account of the on-set and outbreak of COVID-19 pandemic virus, sympathy may also be shown to them for the reason that now only there is a ray of hope for the reason that the normal commercial activities are resumed in a staggered manner and prays for appropriate orders.
- (4) Per contra, Mr.V.Anandamurthy, learned Additional Government Pleader appearing for the respondent would submit that the Kalavai - Vazhapandhal Road [SH-123] at Mambakkam Village, is found to be an accident prone and in the light of the orders passed by the Hon'ble Supreme Court of India, a thorough scientific study was done and having found the same, a fair decision has been taken to remove the encroachments for prevention of accidents and loss of life, abutment of grievous injuries. It is also pointed out by the learned Additional Government Pleader that since Section 28 [2] of the Tamil Nadu State Highways Act, 2001, has been invoked, the petitioners cannot make any grievance.
- (5) The learned counsel appearing for the petitioners, in response to the said submission, would submit that the impugned notices have been issued by the respondent, for which no delegation of power is available in the light of Section 56 of the Tamil Nadu State Highways Act and further points out that in terms of the definition of the Government under Section 2[11] of the said Act, "Government means State Government" and it is a well settled position of law that a delegatee further cannot delegate powers and as such, the respondent lacks necessary jurisdiction to issue the impugned notices and prays for quashment of the same.
- (6) The learned Additional Government Pleader responding to the said submission, would submit that Section 58 would have

application only in respect of the powers conferred under Sections 55, 65 and 66 of the Act and admittedly, Section 28 has been invoked for which, relevant provision is Section 213, which defines Highways Authority-Officer appointed under Section 5[2] of the Highways Act and since such a delegation has been conferred vide proceedings of the jurisdictional Divisional Engineer dated 12.03.2020, the respondent is having competence and jurisdiction to issue the impugned Notices and prays for dismissal of these writ petition.

(7) The Court paid it's best attention to the rival submissions and also perused the materials placed before it.

(8) It is relevant to extract Section 28 of the Tamil Nadu State Highways Act, 2001:-

28. Prevention of encroachment:-

(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;''

(9) Insofar as the legal plea taken by the petitioners is concerned, in the considered opinion of the Court, Section 58 of the Highways Act, 2001, is having application only in respect of the powers conferred under Sections 55, 65 and 66 of the Tamil Nadu Highways Act, 2001 and admittedly, the respondent has invoked Section 28 of the Act.

(10) Section 5 speaks about appointment of Highways Authorities and sub-section [2] says ''A Divisional Engineer, Highways Department of the Government incharge of each Division, shall be the Highways Authority for that Division.'' In the light of the said provision, the delegation of power by the jurisdictional Divisional Engineer upon the respondent

vide proceedings dated 12.03.2020, in the considered opinion of the Court, is perfectly in order.

(11) This Court also can take judicial note of the fact that on account of the onset and outbreaks of COVID-19 pandemic virus, the economic activities, in all spheres, almost came to a standstill and now only it is limping back to normalcy. The petitioners appear to be belonging to economically weaker section and also downtrodden and according to the learned counsel appearing for the petitioners, the petitioners eke out their livelihood solely depending upon the meager income generated out of running small businesses.

(12) This Court, taking into consideration, the above facts and circumstances, permit each of the petitioners to submit their response to the impugned Notices by enclosing relevant and authenticated documents including the Aadhar Card within a period of three weeks from the date of receipt of a copy of this order / uploading of the order in the website and upon receipt of the same, the respondent is directed to consider the said individual representations on merits and in accordance with law and pass appropriate orders, within a further period of three weeks thereafter and communicate the decision taken, to the petitioners and till such time, the respondent shall defer further decision in terms of the impugned Notices.

(13) The writ petitions stand disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Divisional Engineer
Highways Department,
Construction and Maintenance Office,
Arcot, Vellore.

+1cc to Mr.S. RAJTHILAK, Advocate, S.R.No.7220

+1cc to the Government Pleader, S.R.No.6671

SS1 (CO)
SM/05/03/2021

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