



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND

THE HONOURABLE MRS. JUSTICE S.ANANTHI

W.P. (MD)No.1060 of 2021
and W.M.P. (MD) No.914 of 2021
(Through Video Conferencing)

S.Peratchi : Petitioner

Vs.

1.The Divisional Engineer (C&M)
Highways Department
Tirunelveli-2.

2.The Assistant Divisional Engineer (C&M)
Highways Department
Palayamkottai
Tirunelveli District.

3.The Assistant Engineer (C&M)
Highways Department
Palayamkottai
Tirunelveli District.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorari to call for the records of the impugned show cause notice issued by the 2nd respondent in Notice No.154/2021/A1/ dated 11.01.2021 and quash the same as illegal.

For Petitioner : Mr.R.J.Karthick

For Respondents : Mr.K.P.Krishnadoss
Special Government Pleader

ORDER

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

By the order dated 11.01.2021 passed by the 2nd respondent, the petitioner was informed to remove the encroachments said to have been made over the highway and the second respondent is proceeding to undertake a demolition. Therefore, the present writ petition has been filed.



2. Learned counsel appearing for the writ petitioner, submitted that on perusal of the impugned order passed, it is clear that it has been passed, without affording opportunity to the writ petitioner. A conclusion has already been arrived at in the impugned order that the writ petitioner has encroached. Without giving an opportunity to the petitioner to give a reply, the eviction proceedings are resorted to.

3. Heard the learned counsel appearing for the writ petitioner and the learned Special Government Pleader, who takes notice for the respondents.

4. A perusal of the impugned order itself would show that it is only a show cause notice, that is why a specific reference has been made that show cause notice has been issued to the writ petitioner. Therefore, by no stretch of imagination they can be construed as final orders. If it is construed as final order, even then it is liable to be interfered with for want of notice.

5. Considering the above, while holding that impugned notice is merely a show cause notice and the opinion expressed by the second respondent is only *prima facie* in nature, we make it clear that the impugned notice is nothing but a show cause notice and therefore, appropriate order will have to be passed by the second respondent by way of speaking order, after the reply said to have been given by the writ petitioner. The order as aforesaid will have to be passed within a period of four weeks from the date of receipt of a copy of this order. It is needless to state that till such time, *status quo* as of today shall be maintained.

6. The writ petition stands disposed of accordingly. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

RR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Divisional Engineer (C&M)
Highways Department
Tirunelveli.

2.The Assistant Divisional Engineer (C&M)
Highways Department
Palayamkottai
Tirunelveli District.

3.The Assistant Engineer (C&M)
Highways Department
Palayamkottai
Tirunelveli District.

+1 CC to SPL GP (SR-2184[F] dated 27/01/2021)

**Order made in
W.P. (MD)No.1060 of 2021
and W.M.P. (MD) No.914 of 2021
Dated: 25.01.2021**

KM (15.02.2021) 3P 5C