



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P(MD)No.13479 of 2021

and

W.M.P(MD)No.10423 of 2021

Manickavasaham

... Petitioner

Vs.

1.The District Collector,
Madurai District,
Office of the District Collectorate,
Madurai.

2.The Tahsildar,
Peraiyur,
Madurai District.

3.The Assistant Divisional Engineer,
Highways Department,
Construction and Maintenance,
Peraiyur,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the impugned order of the third respondent made in Ku.No.1/2021/E.Vaa.A, dated 16.07.2021 and quash the same.

For Petitioner : Mr.S.Bharathi

For Respondents : Mr.B.Saravanan
Government Advocate

ORDER

(Order of the Court was made by **M.DURAI SWAMY, J.**)

The petitioner has filed the above Writ Petition to issue a Writ of Certiorari, to call for the records relating to the impugned order of the third respondent, dated 16.07.2021 and to quash the same.

2.Mr.S.Bharathi, learned counsel appearing for the petitioner submitted that the third respondent had passed the impugned order, dated 16.07.2021, under Section 28(2)(ii) of the Tamil Nadu Highways



Act, 2001, without giving a show cause notice as contemplated under the said provision.

3.On a reading of the impugned order, dated 16.07.2021, it is clear that the third respondent had called upon the petitioner to remove the encroachment within a period of fifteen (15) days. As per Section 28(2)(ii) of the Act, the authority should give 7 days show cause notice calling upon the encroacher to give his reply. In the case on hand, the third respondent has not given any such show cause notice as contemplated under the Act.

4.Mr.B.Saravanan, learned Government Advocate, taking notice for the respondents, submitted that the impugned order, dated 16.07.2021 itself may be considered as a show cause notice as contemplated under the Act and the petitioner may be directed to give his reply within a period of 7 days.

5.The learned counsel appearing for the petitioner also agreed to the submissions made by the learned Government Advocate and submitted that the petitioner would give his reply within 7 days to the impugned order, dated 16.07.2021.

6.In view of the submissions made by the learned counsel on either side, the impugned order, dated 16.07.2021, shall be construed as a show cause notice as contemplated under Section 28(2)(ii) of the Act and the petitioner is directed to give his reply within 7 days from the date of receipt of a copy of this order and on expiry of the said period, the third respondent is directed to pass orders on merits and in accordance with as expeditiously as possible.

7.With these observations, the Writ Petition is allowed. It is needless to say that the third respondent shall maintain status quo till the date of passing of final order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps

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.

<https://hcservices.ecourts.gov.in/hcservices/>



To

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Highways Department,
Construction and Maintenance,
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Madurai District.

+1 CC to M/s.S.BHARATHI, Advocate (SR-25392[F] dated 05/08/2021)

+1 CC to M/s.GP (SR-25483[F] dated 06/08/2021)

W.P (MD) No.13479 of 2021

05.08.2021

RD(12.08.2021) 3P 6C