



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P(MD)No.13530 of 2021

and

W.M.P(MD)No.10489 of 2021

Vembadiyan

... 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.DURAISWAMY, 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. The learned Counsel appearing for the petitioner submitted that by the impugned order dated 16.07.2021, issued under Section 28 (2)(ii) of the Tamil Nadu Highways Act, 2001, the third respondent sought to remove the encroachment without issuing any show cause notice. Further, the learned Counsel submitted that since the issuance of show cause notice is a mandatory requirement under Section 28(2)(ii) of the Act, the impugned order, calling upon the petitioner to remove the encroachment, is erroneous.

3. Mr.B.Saravanan, learned Government Advocate, taking notice for the respondents, submitted that since the third respondent has not issued any show cause notice, the impugned order dated 16.07.2021 may be treated as a show cause notice and the petitioner may be directed to give his reply to the same. Further, the learned Government Advocate submitted that on receipt of the reply, the third respondent shall pass orders in accordance with law.

4. On a reading of Section 28 of the Tamil Nadu Highways Act, 2001, it is clear that the authority has to issue 7 days show cause notice to the encroacher before initiating any action. However, in the case on hand, the third respondent has not issued any show cause



notice.

5. In view of the submission made by the learned Counsel appearing on either side, the impugned order dated 16.07.2021 issued by the third respondent to the petitioner shall be construed as a show cause notice and the petitioner is directed to give his reply to the same within 7 days, from the date of receipt of a copy of this order, on merits and in accordance with law, as expeditiously as possible. It is needless to say that the third respondent shall maintain *status quo* till the date of passing of final order.

6. With these observations, this Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

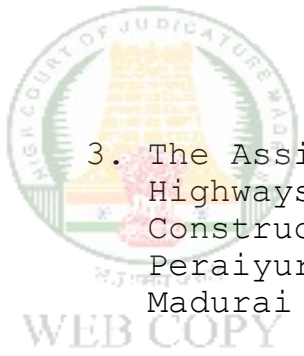
Note :

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 District Collector,
Madurai District,
Office of the District Collectorate,
Madurai.
2. The Tahsildar,
Peraiyur,
Madurai District.

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



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

+1 CC to M/s.SPL GP (SR-25598[F] dated 09/08/2021)

+1 CC to M/s.S.BHARATHI, Advocate (SR-25691[F] dated 09/08/2021)

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and

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