



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

AND

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.17760 of 2021

and

W.M.P(MD)Nos.14645 and 14647 of 2021

M.Muthukamatchi

... Petitioner

Vs.

1.The District Collector,
Theni District,
Theni.

2.The Assistant Divisional Engineer,
National Highway Department,
Theni District,
Theni.

3.The Assistant Divisional Engineer,
National Highway Department
(Construction and Maintenance),
Aundipatty,
Theni District.

4.The Tahsildar,
Aundipatty Taluk,
Theni District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned orders bearing Ku.No:2/Encroachment/2021/A1 dated 02.09.2021 and consequential order bearing Ku.No:2/Encroachment/2021/A1 dated 21.09.2021 passed by the third respondent and quash the same as illegal and consequently direct the respondents to consider the petitioner's representation dated 27.09.2021 on merits.

For Petitioner : Mr.R.Shankar Ganesh

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 Mandamus, to call for the records pertaining to the impugned order dated 02.09.2021 and consequential order dated 21.09.2021 passed by the third respondent and to quash the same and consequently directing the respondents to consider the petitioner's representation dated 27.09.2021.

2.The petitioner has challenged the notices issued by the third respondent dated 02.09.2021 and 21.09.2021. By the notice dated 02.09.2021 issued under Section 28(2)(II) of the Tamil Nadu Highways Act, 2001, the third respondent has called upon the petitioner to give his explanation within fifteen days from the date of receipt of the notice. Subsequently, on 21.09.2021, the third respondent again sent another notice under Section 28(2)(II) of the Tamil Nadu Highways Act, 2001, to the petitioner to give his reply within seven days and also made it clear that failure to give his explanation within seven days, the encroachment made by him would be removed. In spite of receiving both the notices, the petitioner did not bother to give any reply.

3.The learned counsel appearing for the petitioner submitted that the petitioner has given an explanation to the third respondent on 27.09.2021 (explanation dated 29.09.2021).

4.When the petitioner has taken his own time to give his explanation, the same need not be considered by the official respondents. When the petitioner is found to be an encroacher of the highways land in Survey No.67, he cannot remain in possession of the land in question. Further, it is brought to the notice of this Court that the petitioner is in possession of Survey No.66 and that he encroached Survey No.67 which belongs to the Highways Department.

5.In such view of the matter, we are not inclined to interfere with the order passed by the third respondent. Accordingly, the Writ Petition is devoid of merits and the same is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (A.D.I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

indu/ps

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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,
Theni District,
Theni.
- 2.The Assistant Divisional Engineer,
National Highway Department,
Theni District,
Theni.
- 3.The Assistant Divisional Engineer,
National Highway Department
(Construction and Maintenance),
Aundipatty,
Theni District.
- 4.The Tahsildar,
Aundipatty Taluk,
Theni District.

+1 CC to M/s.R.SHANKAR GANESH, Advocate (SR-30790[F] dated 30/09/2021)

+1 CC to M/s.SPL.GP (SR-30878[F] dated 01/10/2021)

W.P (MD) No.17760 of 2021
30.09.2021

RD(18.10.2021) 3P 7C