



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :29.04.2021

CORAM:

**THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

W.P (MD) No.18520 of 2020

and

W.M.P (MD) Nos.15482 and 15843 of 2020

Anis Athiya Banu

...Petitioner

Vs.

1.Assistant Divisional Engineer,
National Highway, Tiruchirappalli.

2.The District Collector,
Tiruchirappalli.

3.The Revenue Divisional Officer,
Tiruchirappalli.

[R2 and R3 are *suo motu* impleaded vide order,
dated 11.12.2020]

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari, calling for the records relating to the impugned proceedings of the respondent dated 05.12.2020 and quash the same as illegal.

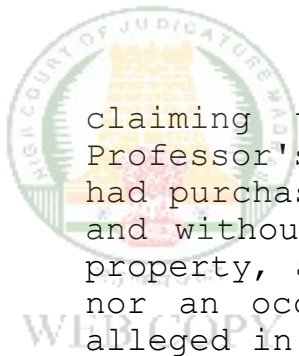
For Petitioner	:Mr.M.Mahaboob Athiff, for M/s.Ajmal Associates
For Respondent No.1	:Mr.SV.Srinivasan, Central Government Standing Counsel
Fore Respondent Nos.2 and 3	:Mr.M.Muthugeethaiyan, Special Government Pleader

ORDER

[Order of the Court was made by **B.PUGALENDHI, J.**]

This writ petition has been filed as against the show cause notice issued by the 1st respondent to one Aslam stating that the RCC building at T.S.No.03 Ward - AE, Block - II, in Trichy - Pudukottai National Highway at 0/6 KM, there is an encroachment upto 168.00 Square Metre. Vide the impugned notice the petitioner Aslam was called upon to show cause, why the above said encroachment should not be removed, as provided under Section 28(2) (ii) of the Tamil Nadu Highways Act, 2001.

2. This writ petition has been filed by one Anis Athiya Banu,
<https://hcservices.ecourts.gov.in/hcservices/>



claiming to be the owner of the premises situated in 7A, Professor's Colony, Subramaniyapuram, Trichy contenting that she had purchased the said property from one Noorjahan, in the year 2003 and without issuing any notice to the petitioner the owner of the property, a notice was issued to a stranger, who is neither a owner nor an occupier of the premises and there is no encroachment as alleged in the impugned notice.

3. Heard Mr.M.Mahaboob Atyhiff, learned Counsel appearing for the petitioner and Mr.Su.Srinivasan, learned Central Government Standing Counsel appearing for the 1st respondent and Mr.M.Muthugeethaiyan, learned Special Government Pleader appearing for the 2nd and 3rd respondents.

4. Mr.Mahaboob Athiff, learned Counsel for the petitioner has raised the following points in challenging the impugned notice

i) the impugned notice was addressed to one Aslam, who is no way connected with the petitioner / the owner of the property.

ii) Even according to the respondent, the alleged encroachment is in National Highway, whereas, the impugned notice was issued under Section 28(2)(ii) of the Tamil Nadu State Highway Act, 2001.

iii) Tamil Nadu State Highway Act, 2001 is a State Enactment, which become void in view of the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

5. According to the learned Counsel for the petitioner, the 1st respondent is not the Authority under the National Highways Act and is not entitled to issue the impugned notice. Moreover, the notice was issued to one Aslam, who is neither the owner nor the occupier of the premises in dispute.

6. Considering the submissions made by the learned Counsel for the petitioner, in order to ascertain the factual position, this Court by order dated, 11.12.2020, *suo motu* impleaded the District Collector, Tiruchirappalli and the Revenue Divisional Officer, Tiruchirappalli as respondents 2 and 3 in this writ petition and also directed Mr.Muthugeethaiyan, learned Special Government Pleader, who took notice for the respondents 2 and 3, to get instructions, as to whether the property belonged to the petitioner, is located in the National Highways or in the State Highways.

7. Mr.M.Muthugeethaiyan, learned Special Government Pleader submitted that the road referred to by the petitioner is named as NH 210 - Trichy - Pudukottai - Devakottai - Ramanathapuram road and the same is maintained by the National Highways Division Trichy, a Division of the Office of the National Highways Wing of National Highways Department, Government of Tamil Nadu.

8. The stretch of 0/2 to ½ KM to 10/0 KM of the said road, though vests with the National Highways Department, the construction and the maintenance of the road is vested with the National Highways Wing of the National Highways Department of Government of Tamil Nadu. The



Ministry of Transport and Highways Government of India, to meet out the increasing traffic flow, is widening the road from two lane to four lane with paved shoulders from 4/0 KM to 10/0 KM at an estimated cost of Rs.6799.99 lakhs.

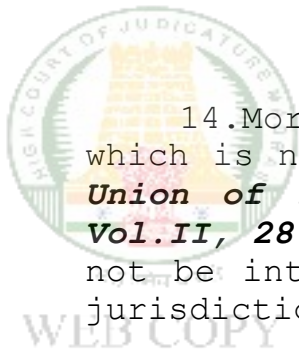
9. In this process, the Additional Divisional Engineer, National Highways Wing of the Highways Department of the Government of Tamil Nadu, conducted survey and identified the extent of encroachment and issued notice calling upon the encroachers to vacate. Though one Noorjahan name is mentioned in the records, one Aslam is in occupation of the premises dispute and therefore, the impugned show cause notice was issued to the occupier of the premises, namely, Aslam.

10. According to the learned Special Government Pleader, though the road actually belongs to the National Highways Department, the construction and maintenance of this road is under the supervision and control of the Officer of the National Highways Wing, Highways Department, the Government of Tamil Nadu. Admittedly, it is a National Highways road and in order to meet out the increasing the traffic flow there is a proposal for expansion of the road from two lane to four lane with paved shoulders from 4/0 KM to 10/0 KM, however under the supervision and control of the National Highways Wing, Highways Department, the Government of Tamil Nadu.

11. In this case, the impugned notice was issued to one Aslam, who is the occupier of the premises. Admittedly, this petitioner is residing at Ariyalur and has not claimed that she is in occupation of the said building. Though she has purchased the property in the year 2003, the records stand in the name of her vendor viz., Noorjahan and in the absence of the vendor at the premises, the 1st respondent issued the impugned notice, on the occupier of the land. The impugned show cause notice is very much available with the petitioner and the petitioner has also challenged the impugned notice in this writ petition. Therefore, the petitioner cannot take any advantage on the impugned notice served on the occupier of the premises.

12. Since the subject matter of the road is under the maintenance and supervision of the National Highways Wing, National Highways, the Government of Tamil Nadu, this Court does not find any error in the impugned notice issued by the 1st respondent under the State Highways Act .

13. According to the 1st respondent, there are nearly 326 encroachers in the State Highways and such encroachments were identified after conducting survey and subsequently, notices were issued to all the encroachers mentioning the extent of the encroachment.



14. Moreover, the impugned notice is only a show cause notice, which is normally not interfered with. The Hon'ble Supreme Court in **Union of Inida Vs Kunisetty Stayanarayana**, reported in **2006 SCC Vol.II, 28**, has held that the charge memo or show cause notice shall not be interfered with by the orders of the Courts except lack of jurisdiction of the authority or if any *mala fides* are attributed.

15. Though the petitioner has taken a ground of jurisdiction, such an issue has already been discussed supra that the National Highways Road is under the maintenance of the National Highways Wing, National Highways Department, Government of Tamil Nadu. We do not find any error in the impugned notice. The petitioner has not attributed any *mala fides*. The petitioner is not residing in the premises and the notice was issued on the occupier of the building and the service of notice on the occupier of the premises would not vitiate the impugned notice. Therefore, this writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed.

16. However, it is open to the petitioner to offer her explanation to the impugned show cause notice to the respondents, within a period of fifteen days from the date of receipt of copy of this order and if any explanation is offered by the petitioner, the first respondent shall consider the same and pass orders within a period of two weeks from the date of receipt of their explanation and thereafter, shall proceed further. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To:

1. Assistant Divisional Engineer,
National Highway, Tiruchirappalli.
 2. The District Collector, Tiruchirappalli.
 3. The Revenue Divisional Officer,
Tiruchirappalli.
- +1 CC to M/s.SPL GP (SR-18293[F] dated 30/04/2021)

W.P (MD) No.18520 of 2020
29.04.2021

RP (17.05.2021) P 5C