



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) Nos.19274, 19322, 19328, 19337, 19342,
19509, 19519 and 19520 of 2020
and

W.M.P (MD) Nos.16090, 16148, 16121, 16142, 16119,16125,16131,
16144, 16150, 16255,16256,16264,16266,16267 and 16269 of 2020

R.Manickam	... Petitioner in WP(MD). 19274/ 2020
Gunasekaran	... Petitioner in WP(MD). 19322/ 2020
S.Kathirvel	... Petitioner in WP(MD). 19328/ 2020
S.A.S Selvaraj	... Petitioner in WP(MD). 19337/ 2020
P.Kasim	... Petitioner in WP(MD). 19342/ 2020
Megala.S	... Petitioner in WP(MD). 19509/ 2020
N.Sathya Jothi	... Petitioner in WP(MD). 19519/ 2020
M.Abdullah	... Petitioner in WP(MD). 19520/ 2020
	Vs.

1.The Divisional Engineer,
National Highways,
Highways Colony,
Subramaniyapuram,
Trichy - 620 020.

2.The Assistant Divisional Engineer,
National Highways,
Highways Colony,
Subramaniyapuram,
Trichy - 620 020.

3.The Assistant Engineer,
National Highways,
Section - II, Trichy.

: Respondents
in W.P(MD) Nos.19274, 19322, 19328,
19337 and 19342 of 2020

1.The Divisional Engineer,
National Highways,
Highways Department,
Tiruchirapalli.



2.The Assistant Divisional Engineer,
National Highways,
Highways Colony,
Tiruchirapalli.

: Respondents
in W.P(MD)Nos.19509,19519 and 19520 of 2020

COMMON PRAYER IN W.P(MD)Nos.19274, 19322, 19328, 19337 and 19342 of 2020:

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari, calling for the records pertaining to the impugned show cause notice issued by the 2nd respondent in No.Nil, dated 15.12.2020 and quash the same.

COMMON PRAYER in W.P(MD)Nos.19509,19519 and 19520 of 2020:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari Mandamus, calling for the entire records relating to the impugned notice No.Nil dated 15.12.2020 of the 2nd respondent and quash the same as illegal and consequently direct the respondents herein to consider the representation of the petitioner dated 17.12.2020 within the time limit stipulated by this Hon'ble Court.

For Petitioner : Mr.R.Subramanian,
IN W.P(MD)Nos.19274, 19322, 19328,
19337 and 19342 of 2020

: Mr.M.Jegadeesh Pandian,
in W.P(MD)Nos.19509,19519
and 19520 of 2020

Fore Respondents : Mr.M.Muthugeethaiyan,
Special Government Pleader
in all cases

COMMON ORDER

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

These writ petitions have been filed as against the show cause notices issued by the 2nd respondent to the petitioners stating that in T.S.No.03 Ward - AE, Block - II, in Trichy - Pudukottai National Highway there are encroachments by the petitioners. Vide the impugned notices, the petitioners were called upon to show cause, why the above said encroachments should not be removed, as provided under Section 28(2) (ii) of the Tamil Nadu Highways Act, 2001.

2.These writ petitions have been filed by the petitioners contenting that they are *bona fide* purchasers of the properties in dispute and there is no encroachment as alleged in the impugned notices.



3. Heard Mr.R.Subramanian, learned Counsel appearing for the petitioner and Mr.M.Muthugeethaiyan, learned Special Government Pleader appearing for the respondents.

4. The learned Counsel appearing for the petitioners have raised the following points in challenging the impugned notices:

i) 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 Stat Highway Act, 2001 and

ii) 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 petitioners, the 2nd respondent is not the Authority under the National Highways Act and is not entitled to issue the impugned notices.

6. Mr.M.Muthugeethaiyan, learned Special Government Pleader submitted that the road referred to by the petitioners are 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.

7. 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 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.

8. 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. Therefore, the impugned show cause notices were issued to the petitioners.

9. 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 traffic flow there is a proposal for expansion of the road from two 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.

10.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 notices issued by the 2nd respondent under the State Highways Act .

11.According to the 2nd 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.

12.Moreover, the impugned notices are only show cause notices, which are normally not interfered with. The Hon'ble Supreme Court in ***Union of India 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.

13.Though the petitioners have 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.

14.We do not find any error in the impugned notices. The petitioner have not attributed any *mala fides*. Therefore, these writ petitions are liable to dismissed. Accordingly, the writ petitions are dismissed.

15.However, it is open to the petitioners to offer their explanation to the impugned show cause notices to the respondents, within a period of 15 days from the date of receipt of copy of this order and if any explanation is offered by the petitioners, the 2nd 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 (AE)

// True Copy //

/ /2021

Sub Assistant Registrar



To

1.The Assistant Divisional Engineer,
National Highway,
Tiruchirappalli-620020.

2.The Assistant Divisional Engineer,
National Highways,
Highways Colony,
Subramaniyapuram,
Trichy - 620 020.

3.The Assistant Engineer,
National Highways,
Section - II, Trichy.

+5 CC to M/s.R.SUBRAMANIAN, Advocate (SR-18110[F] dated
30/04/2021)

+1 CC to M/s.SPL GP (SR-18291[F] dated 30/04/2021)

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19509, 19519 and 19520 of 2020
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MS/24.05.2021/5P.10C