



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2021

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WEB COPY

**THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN**

W.P. (MD)No.20134 of 2021
and W.M.P. (MD)Nos.16838 & 16840 of 2021

S.Sundarraaj

.. Petitioner

Vs.

1. The District Collector,
Thanjavur, Thanjavur District.

2. The Tahsildar,
Thanjavur, Thanjavur District.

3. The Assistat Divisional Engineer,
National Highways Department,
Karaikal Road, Kumbakonam,
Thanjavur District.

4. Mugaideen Abdulkadhar,
S/o.Abdul Ajeem,
58-A, Doctor Moorthi Road,
Kumbakonam Town,
Thanjavur District.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to the impugned notice passed by the third respondent in his proceedings Ku.No.10/Aakkiramanam/2021/A1, dated 01.11.2021 and quash the same as illegal.

For Petitioner : Mr.K.Mahendran
For Respondents : Mr.B.Saravanan,
Government Advocate for RR 1 and 2

O R D E R

PUSHPA SATHYANARAYANA, J.

Mr.B.Saravanan, learned Government Advocate accepts notice for the official respondents. The fourth respondent is a formal party and there is no need to serve notice on him, for the order we propose to pass.

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2. With the consent of the learned counsel on either side, this writ petition is taken up for final hearing at the admission stage itself.

3. The petitioner questioned the notice issued by the third respondent in Ku.No.10/Aakkiramanam/2021/A1, dated 01.11.2021.

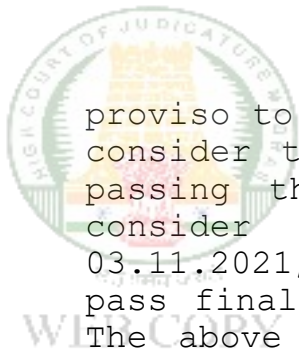
4. The case of the petitioner is that he entered into an agreement with the fourth respondent for tenancy in the subject property and put up a temporary shed to run a hotel. Similar temporary sheds have been put up in the neighbouring properties also. The third respondent issued a notice dated 01.11.2021 asking the petitioner to remove the shed since the same is constructed on the rainwater drainage, and subsequently, issued the impugned notice under Section 28(1) and (2) of Chapter V of Tamil Nadu Highways Act, 2001. He submitted a representation under Section 26(2) of the said Act seeking permission to run the temporary hotel, on payment of rent. Since the same was not considered, he filed this writ petition seeking the above prayer.

5. Learned counsel for the petitioner submitted that the petitioner is the tenant under the fourth respondent and he put up a temporary structure to run the eatery and fish shop, which is permissible under the Tamil Nadu Highways Act, 2001 (in short, "the 2001 Act"). It is further contended that when the structure is without affecting free flow of traffic and there were similar structures being put up in the neighbouring lands, the official respondents singly issued the impugned notice to the petitioner and taken action only against him leaving the other shop owners. It is also submitted that the petitioner, upon receipt of notice, submitted a representation dated 03.11.2021, which has to be considered by the authorities within a reasonable time, in terms of proviso to Section 28 of the 2001 Act.

6. Heard the learned Government Advocate on the above submissions and perused the materials available on record.

7. When the stand of the official respondents is that the subject land is a highway, the alleged tenancy deed with the fourth respondent and the receipts for payment of electricity bill and charges to local body have no relevance. The 2001 Act permits the Highways authorities or the person authorized by it to remove structures encroaching the highway after issuing show cause notice, which is returnable within a period of seven days from its receipt, which condition is also fulfilled.

8. The learned counsel for the petitioner contended that the third respondent cannot issue a notice under Section 28(1) and (2) of the 2001 Act without issuing any notice under Section 26 of the said Act. A reading of the said provisions runs to the contrary. Hence, the case has no substance in the said submission. However, as the



proviso to sub-section (2) of Section 28 mandates the authorities to consider the representation received within the time limit before passing the final orders, the third respondent is directed to consider the representation submitted by the petitioner on 03.11.2021, after giving him an opportunity of personal hearing and pass final orders in accordance with law within a reasonable time. The above exercise shall be completed, after considering all the grounds raised by the petitioner in the representation as well as personal hearing, not later than three weeks from the date of receipt of a copy of this order.

9. With the above direction, the writ petition stands disposed of. There shall be no order as to costs on the writ petitioner. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

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To

1. The District Collector,
Thanjavur, Thanjavur District.
2. The Tahsildar,
Thanjavur, Thanjavur District.
3. The Assistat Divisional Engineer,
National Highways Department,
Karaikal Road, Kumbakonam,
Thanjavur District.

+1 CC to M/s.K.MAHENDRAN, Advocate (SR-33893[F] dated 10/11/2021)

+1 CC to M/s.SPL.GP (SR-33918[F] dated 10/11/2021)

W.P. (MD)No.20134 of 2021
09.11.2021

NA(CO)

KB(10.12.2021) 3P 6C