



W.P. No.34740 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2022

CORAM

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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V.Selvam

... Petitioner

versus

1.The Assistant Director,
Highways Department,
City Roads, Saidapet, Chennai 15.

2.The Executive Engineer,
Highways Department,
City Roads, Saidapet, Chennai 15.

3.The Assistant Divisional Engineer,
Highways Department,
City Roads, Saidapet, Chennai 15.

4.The Tahsildar,
Egmore Taluk, Egmore Chennai.

5.The District Collector,
Chennai District

... Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India
praying for a Writ of Certiorari to call for the records pertaining to the
eviction notice issued by the third respondent vide Memo



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(i)No.02/2018-2/E.NI.VA.Aa/dated 14.12.2022; (ii) No.02/2018-3/E.NI.VA.Aa/dated 14.12.2022; (iii)No.02/2018-5/E.NI.VA.Aa/date 14.12.2022; (iv)No.02/2018-9/E.NI.VA.Aa/date 14.12.2022; (v) No.02/2018-10/E.NI.VA.Aa/date 14.12.2022 to the petitioner and to quash the same.

For the Petitioner : Mr.R.Rangarajan

For the Respondents : Mr.P.Muthukumar,
State Government Pleader

ORDER

(Made by the Hon'ble Acting Chief Justice)

This writ petition has been filed challenging the impugned notice dated 14.12.2022 issued by the third respondent, directing the petitioner to remove the encroachments.

2. Learned counsel for the petitioner submitted that the petitioner has been residing at No.120/113, Periyar Pathai, Choolaimedu, Chennai and running a food stall in the premises. He has also put up a temporary construction containing asbestos sheet at Old No.113 and New No.120, Periyar Pathai, Choolaimedu, Chennai. A 6' passage east of Plot No.10, Backaiammal house was purchased by petitioner's father late Mr.Velayutham, during his life time, vide registered sale deed bearing No.974 of 1981 on the file of Sub-



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Registrar Office, Kodambakkam. In the year 1984, the State Government has acquired the said property on the basis of the proceedings of the Special Officer dated 10.05.1978 and thereafter, the present impugned notice has been issued on 14.12.2022 terming the petitioner as an encroacher and calling upon him to vacate and handover the encroached properties.

3. Section 28(2) of the Tamil Nadu Highways Act, 2001, states that the Highway Authority may remove any movable temporary structure, enclosure, stall, booth any article whatsoever hawked, exposed or displayed for sale by way of encroaching the highway or in any area where the construction or development of highway is undertaken or proposed to be undertaken, without any notice. Section 28(2)(ii) states that the Highways authority may remove any immovable structure, whether permanent or temporary in nature, encroaching the highway or in the area vested with Government, after issuing a show-cause notice against such removal, returnable within a period of seven days from the date of receipt thereof. According to the petitioner, in the present case, the impugned notice has been issued under Section 28(2)(ii) of the Act. Since the petitioner has been



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residing in the said property for a very long time and no opportunity has been given to him to put-forth his case, the impugned order has to be quashed.

4. The learned Government Pleader appearing for the respondents produced copy of the written instructions and submitted that the land covered in S.No.105 is Government poromboke land classified as 'Highway'. The petitioner, in his affidavit, has also admitted that he has put up a temporary construction containing asbestos sheet at Old No.113 and New No.120, Periyar Pathai, Choolaimedu.

5. When the respondent has been taking steps to widen the road for the benefit of the general public, the petitioner, being an encroacher, cannot claim for leniency. The impugned notice is issued under Section 28(2)(ii) of the Act of 2001. As per the said Section, after the issuance of show-cause notice, against such removal, the encroacher can submit his reply within seven days from the date of receipt of such notice. Learned counsel for the petitioner submits that today is the seventh day for submitting the representation. The



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petitioner, instead of approaching this Court, ought to have submitted his representation to the authorities.

6. There is no merit in this writ petition. The writ petition fails and the same is dismissed. There will be no order as to costs. Consequently, WMP No.34159 of 2022 is closed.

(T.R., ACJ.) (D.B.C., J.)
23.12.2022

Index: Yes/No
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