



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2022

CORAM :

WEB COPY THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P(MD)No.180 of 2022
and
WMP(MD)No.130 of 2022

Radha

... Petitioner

vs.

- 1) The District Collector,
Theni, Theni District.
- 2) The Assistant Divisional Engineer,
National Highways,
Theni.
- 3) The Thasildar,
Office of the Theni Taluk Office,
Theni, Theni District.

... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned proceedings issued by the 2nd respondent herein vide Na.Ka.No.130/2021/Vu dated 22.12.2021 and quash the same.

For Petitioner : Mr.C.Jeganathan
For Respondents : Mr.B.Saravanan
Additional Government Pleader

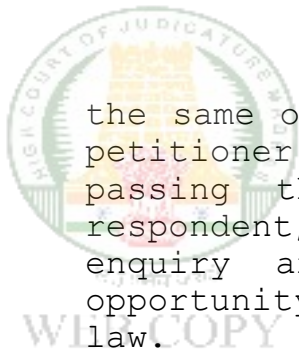
ORDER

(Order of the Court was made by
PUSHPA SATHYANARAYANA, J.)

The writ petition is filed challenging the notice issued by the 2nd respondent under Section 26(2) of the Control of National Highways (Land and Traffic) Act 2002.

2. Earlier, the very same writ petitioner had moved this Court in W.P(MD)No.21601 of 2021 challenging the similar order dated 20.11.2021 issued by the very same official. This Court set aside

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the same only on the ground that there was no notice issued to the petitioner before the order of encroachment was passed. While passing the order, this Court had specifically directed the respondent, to issue a fresh notice to the petitioner, conduct an enquiry and pass appropriate orders, after affording her an opportunity of personal hearing, on merits and in accordance with law.

3. Despite the abovesaid detailed direction, without even applying the mind, the 2nd respondent has once again issued the notice in a mechanical manner. Such notice also says that the encroachment made by the petitioner was confirmed, thereby calling upon her to remove the encroachment within a period of seven days.

4. The learned Additional Government Pleader appearing for the respondents is unable to say whether any notice was issued before coming to the conclusion that the petitioner had encroached upon the Highway's land.

5. Admittedly, no opportunity was given to the petitioner before the impugned order was passed. This is the second notice issued by the 2nd respondent within a span of two months. Despite the intervention of this Court, the respondents have not considered the order of this Court and passed a stereo-typed order, jeopardizing the interest of the petitioner.

6. In the light of the above findings, we have no other option excepting to set aside the notice issued by the 2nd respondent. It is also hereby warned that if the said officer once again passed another order without application of mind, he will be taken to task. The 1st respondent / District Collector, Theni District, is also directed to look into the matter before proceeding further. However, it is made clear that if upon enquiry, the petitioner is found to be an encroacher, she has to be dealt with in the manner known to law.

7. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

bala



To

- 1) The District Collector,
Theni, Theni District.
- 2) The Assistant Divisional Engineer,
National Highways
Theni.
- 3) The Thasildar,
Office of the Theni Taluk Office,
Theni,
Theni District.

+1 CC to M/s.SPL.GP (SR-568[F] dated 06/01/2022)

W.P(MD)No.180 of 2022

DATED : 05.01.2022

MGJ(20.01.2022) 3P 5C