



W.P.(MD)No.18077 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.08.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.P.(MD)No.18077 of 2022
and W.M.P.(MD) Nos.13183 and 13185 of 2022

V.R.Thangarajan

... Petitioner

Vs.

1.The Chief Engineer (Highways),
Chennai Kanyakumari Industrial Corridor Project,
CKICP Complex,
HRS Campus,
76, Sardar Patel Road,
Guindy,
Chennai – 600 025.

2.The Divisional Engineer (Highways),
Chennai Kanyakumari Industrial Corridor Project,
D.No.19/2, Ramnagar,
Maharaja Nagar,
Thirunelveli.

3.Assistant Divisional Engineer (Highways)
Chennai Kanyakumari Industrial Corridor Project,
Thirupathur.

4.The Tahsildar,
Melur Taluk,
Madurai District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned notice dated 02.08.2022 on the file of the Respondent No.3 and quash the same as illegal and consequentially direct the Respondents No.1 to 3 to ensure the safety of the Electric pole or relocate the electric pole and ensure that no further encroachment to the extent already protected by the Petitioner by thatched fence in S.No.140 in Kelavalavu, Melur Taluk, Madurai District within the time frame stipulated by this Hon'ble Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.S.P.Maharajan
Special Government Pleader

ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of eviction, directing the petitioner to remove the encroachment in the property, which is adjacent to the State Highways in Keelavalavu Village, Melur Taluk comprised in S.No.140.



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2. Heard Mr.T.Lajapathi Roy, learned counsel for the petitioner and Mr.S.P.Maharajan, learned Special Government Pleader, appearing for the respondents. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3. The grievance of the petitioner is in two folds. Learned counsel for the petitioner pointed out that the impugned order of eviction is without following a fair procedure and the same is therefore, in violation of principles of natural justice. Learned counsel for the petitioner then pointed out that in front of the petitioner's house there is an electric pole. Since the stay wire of the pole is fixed in the road itself, it is submitted by the learned counsel that removal of such stay wire would result in falling of the pole into the property of the petitioner.

4. The second contention of learned counsel for the petitioner based on apprehension has been met by the respondents by saying that the Highways Department is not going to touch the stay wire, which is grounded within the road portion.



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5. As far as the first submission of learned counsel for the petitioner that the impugned order is in violation of principles of natural justice, this Court finds some force in the submission. Section 28 of the Tamil Nadu Highways Act, 2001 reads follows:

“28.(1) The Highways authority or any person authorised by it in this behalf shall, at such time as may be considered necessary, conduct such checks and periodical inspection, of the highway boundaries, with the view to ensure the prevention of unauthorised encroachment and the removal of such encroachment.

(2) The Highways authority or any person authorised by it in this behalf, may--

(i) remove, without any notice, any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching the highway or in any area where the construction or development of a highway is undertaken or proposed to be undertaken;

(ii) remove any immovable structure, whether permanent or temporary in nature, encroaching the highway or in the area vested



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with Government under this Act, after issuing a show cause notice against such removal, returnable within a period of seven days from the date of receipt thereof:

Provided that any representation received within the time limit shall be considered by the authority or officer concerned before passing final orders.”

Therefore, it is mandatory that the Highways authority before removing any immovable structure encroaching the Highways or the area vested with the Government to issue show cause notice giving 7 days time to respond.

6. From the nature of encroachment pointed out by the petitioner himself, it is seen that the petitioner has not put up any permanent or temporary structure, which is immovable in nature. However, without going into the legal issue, this Court is of the view that the petitioner may be given an opportunity before passing an order of eviction under Section 28(2)(ii) of the Tamil Nadu Highways Act, 2001. Since the petitioner has been given notice / communication directing him to remove the temporary structure, the same shall be treated as a show cause notice under Section 28(2)(ii) of the Tamil Nadu Highways Act, 2001. The



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petitioner shall submit his objections within a period of one week from the date of receipt of a copy of this order. Upon receipt of such objections from the petitioner, the respondents shall consider the same and pass appropriate orders as contemplated under Section 28(2)(ii) of the said Act.

7. In respect of the grievance of the petitioner regarding the electric pole that is erected in front of his house, the petitioner is permitted to approach the TANGEDCO officials and the TANGEDCO officials in consultation with the respondents may, keeping in mind the possible threat to the house of the petitioner, either fix the stay wire on ground properly or shift the pole to some other place so that the encroachment in the road will be minimized and there is no threat to any individual, including the petitioner.

8. The Writ Petition is disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

[S.S.S.R., J.] [S.S.Y., J.]
11.08.2022

Index : Yes / No
sj



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