



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2022

CORAM:

THE HONOURABLE **MR. JUSTICE S.S.SUNDAR**

and

THE HONOURABLE **MR. JUSTICE R.VIJAYAKUMAR**

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W.P(MD)Nos.243, 313, 684 to 692 and 2009 of 2018

and

W.M.P.(MD) Nos.246, 247 of 2018 & 17020 of 2019, 325 of 2018 & 17018 of 2019, 706 of 2018 & 16769 of 2019, 707 of 2018 & 16778 of 2019, 708 of 2018 & 16768 of 2019, 709 of 2018 & 16770 of 2019, 710 of 2018 & 16773 of 2019, 711 of 2018 & 16634 of 2019, 712 of 2018 & 16635 of 2019, 713 of 2018 & 16636 of 2019, 714 of 2018 & 16771 of 2019 and 2229 of 2018 & 16762 of 2019

Karuppiyah	... Petitioner in W.P.(MD) No.243/2018
Balamurugan	... Petitioner in W.P.(MD) No.313/2018
Chandramathi	... Petitioner in W.P.(MD) No.684/2018
R.Palanichamy	... Petitioner in W.P.(MD) No.685/2018
A.Manikandan	... Petitioner in W.P.(MD) No.686/2018
Packiyalakshmi	... Petitioner in W.P.(MD) No.687/2018
Sudalaimuthu	... Petitioner in W.P.(MD) No.688/2018
Pasupathi	... Petitioner in W.P.(MD) No.689/2018
M.Pandian	... Petitioner in W.P.(MD) No.690/2018
Ayyavuthevar	... Petitioner in W.P.(MD) No.691/2018
muthuKumar@Kumar	... Petitioner in W.P.(MD) No.692/2018
Kannan	... Petitioner in W.P.(MD) No.2009/2018
Vs.	

1.The District Collector,
Dindigul District,
Dindigul.

2.The Tahsildar,
Kodaikanal,
Dindigul District.



3.The Assistant Divisional Engineer (Highways),
Office, Construction and Maintenance,
Kodaikanal,
Dindigul District.

4.The Special Officer,
Mannavanur Panchayat,
Kodaikanal,
Dindigul District.

... Respondents in W.P.(MD) No.243/2018

1.The Divisional Engineer (Highways),
Office of the Divisional Engineer (Highways),
Dindigul District.

2.The Assistant Divisional Engineer (Highways),
(Construction and Maintenance)
Kodaikanal,
Dindigul District.

... Respondents in W.P.(MD) Nos.
313, 684 to 692 & 2009/2018

Prayer in W.P.(MD) No.243 of 2018: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to impugned order in Na.Ka.No.92/2017/A1 dated 28.12.2017 issued by the 3rd respondent in respect of petitioner's patta land in S.No.1017/1 in Mannavanur Village, Kodaikanal, Dindigul District and to quash the same as illegal.

Common Prayer in W.P.(MD) Nos.313, 684 to 692 and 2009 of 2018: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to impugned order passed by the 2nd Respondent in his proceedings in Na.Ka.No.92/2017/A1 dated 28.12.2017 and quash the same as illegal.

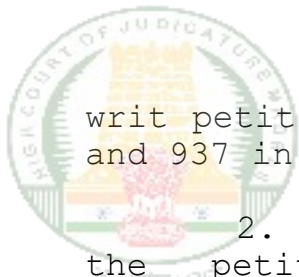
For Petitioner in all the Writ Petitions : Mr.C.Mayilvahana Rajendran
for M/s.V.B.Sundhareshwar
and M/s.K.Kulanthai Vickram

For Respondents in all the Writ Petitions : Mr.N.Satheeshkumar
Additional Government Pleader

COMMON ORDER

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

The petitioners in all these writ petitions have challenged the order passed by the 2nd Respondent in Na.Ka.No.92/2017/A1 dated 28.12.2017, directing the petitioners to remove the encroachments made by the petitioner in the respective



writ petitions in respective portion of a street/road in S.Nos.1018 and 937 in Mannavanur Village, Kodaikanal Taluk, Dindigul District.

2. Heard Mr.C.Mayilvahana Rajendran, learned counsel for the petitioners and Mr.N.Satheeshkumar, learned Additional Government Pleader appearing for the respondents.

3. The property in which encroachment is noticed is classified as 'Nedunchalai Poramboke'. Since the impugned notice issued in respect of the writ petitioners is in the nature of direction to the petitioners to remove the encroachment within 7 days, the submission of learned counsel for the petitioner in all these writ petitions is that the petitioners were not heard before passing the order and hence, the notices are liable to be quashed for violation of principles of natural justice.

4. Sections 28 and 29 of the Tamil Nadu Highway Act, 2001 reads as 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 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.

29. (1) Whenever any encroachment is removed or any protective work is carried out in respect of any encroachment, the cost thereof

shall be recovered from the person responsible



for the encroachment, as if it were an arrear of land revenue.

(2) The materials, if any, recovered as a result of the removal or any encroachment shall be handed over to the person responsible for the encroachment on payment of the cost, if any, recoverable under sub-section (1). Where the cost is not paid, the materials seized shall be disposed of, in such manner as may be prescribed."

5. As per Section 28 of the Tamil Nadu Highways Act, 2001, the Highways authority or any person authorised under the Act are expected to prevent unauthorized encroachment and to take appropriate action for removal of such encroachment. If the encroachment is in respect of the road by any permanent or semi-permanent structure encroaching the highway or in the area vested with Government under this Act, the respondents are expected to issue a show cause notice, calling for explanation within 7 days from the date of receipt of the notice. Upon getting any explanation received within the time limit, the authorized officer is expected to pass final orders. It is thereafter, the officer authorized can remove the encroachment and costs of such removal also can be recovered from the person responsible for the encroachment.

6. Learned Additional Government Pleader on instructions submitted that pursuant to the directions of this Court earlier, the Revenue Department has conducted survey and identified the encroachment by individuals by putting up constructions, blocking and encroaching into the street/road, which has to be removed under the provisions of the Tamil Nadu Highways Act, 1905. However, it is not in dispute that before issuing the impugned notice, no show cause notice as contemplated under Section 28(2) of the Highways Act was issued.

7. In the said circumstances, this Court has no other option except to quash the impugned order, challenged in the above batch of writ petitions, directing the petitioner to remove the encroachment within 7 days. However, considering the fact that the matter is pending from 2018, this Court directs that the notice that was issued by the second respondent impugned in these writ petitions shall be treated as a show cause notice and the petitioner in the respective writ petitions shall submit their representation/explanation within 7 days from the date of receipt of a copy of this order. On such objections/explanations received from the respective petitioner, the second respondent shall proceed further and pass final orders as contemplated under Section 28 (2) of the Tamil Nadu Highways Act, 2001 after considering the objection/representation of petitioners in accordance with law.

<https://hcservices.ecourts.gov.in/hcservices/> With the above directions, these Writ Petitions are



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W.P.(MD)Nos.243, 313, 684 to 692 and 2009 of 2018

disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

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/06/2022

Sub Assistant Registrar(CS)

sj

To

- 1.The District Collector,
Dindigul District,
Dindigul.
- 2.The Tahsildar,
Kodaikanal,
Dindigul District.
- 3.The Divisional Engineer (Highways),
Office of the Divisional Engineer (Highways),
Dindigul District.
- 4.The Assistant Divisional Engineer (Highways),
Office, Construction and Maintenance,
Kodaikanal,
Dindigul District.
- 5.The Special Officer,
Mannavanur Panchayat,
Kodaikanal,

+2CC to Mr.C.Mayilvahana Rajendran. Advocate, SR.No. 27237,27235
dated 21/06/2022

W.P (MD) Nos.243, 313, 684 to 692 and 2009 of 2018
21.06.2022

SRK(CO)

KB(29.06.2022) 5P 8C