



W.P.(MD)No.19649 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2022

CORAM

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

W.P.(MD)No.19649 of 2022
and
W.M.P.(MD)No.14360 of 2022

K.Chellappa

... Petitioner

Vs.

- 1.The Superintending Engineer,
Highways Department,
Construction & Maintenance,
No.888, TVS Tollgate,
Subramaniapuram,
Trichy – 20.
- 2.The Divisional Engineer,
Highways Department,
Construction & Maintenance,
Trichy Division,
Trichy.
- 3.The Assistant Divisional Engineer,
Highways Department,
Construction & Maintenance,
Thuraiyur, Trichy District.
- 4.The Assistant Engineer,
Highways Department,
Construction & Maintenance,
Thuraiyur, Trichy District.

... Respondents



W.P.(MD)No.19649 of 2022

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari calling for the records pertaining to the impugned order passed by the fourth respondent in No.Nil dated 18.08.2022 and quash the same.

For Petitioner : Mr.M.Saravanan
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 challenging the impugned notice dated 18.08.2022 issued by the Assistant Engineer, Construction & Maintenance, Thuraiyur, Trichy District, the fourth respondent in the writ petition.

2. Heard Mr.M.Saravanan, learned counsel for the petitioner and Mr.S.P.Maharajan, learned Special Government Pleader, who takes notice for the respondents. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.



W.P.(MD)No.19649 of 2022

3. Brief facts that are necessary for the disposal of the writ petition are as follows:

The petitioner states that an extent of 1.35 ares in Survey No.874/9 in Pulivalam Village, Musiri Taluk, Trichy District and some other properties, belong to his ancestors and that, they created a private Trust by name "Apparswamy Thannerpandal Trust". While the petitioner traced his title and right to be in possession on the basis of several documents, it appears that the impugned notice is issued intimating the petitioner to remove the encroachment. It is also indicated in the impugned notice that the persons who have put up construction should also remove the construction on their own. However, in the impugned notice there is no mention about the extent of the land encroached by the petitioner which is claimed to be the property of the Highways Department. As a matter of fact, no description of the property with reference to boundaries is given or mentioned in the impugned notice. Hence, the petitioner has come forward with this writ petition challenging the impugned notice.



W.P.(MD)No.19649 of 2022

4. Though the Divisional Engineer of Highways Department is empowered to remove the encroachment by invoking the provisions of Section 28 of the Tamil Nadu State Highways Act, 2001, it is seen that a show-cause notice is required in terms of Section 28(2) of the Tamil Nadu State Highways Act, 2001. This Court has also following the judgment of the Honourable Supreme Court in ***Madhav Rao Schindia v. Ramesh Jatav*** reported in ***[(2006) 1 SCC 379]***, has held that there must be a survey conducted in the presence of encroacher even before taking action for removal of encroachment.

5. It is now admitted before this Court that no survey was conducted in the presence of the petitioner on the ground that the petitioner was not available on the date of survey which was conducted by the respondents.

6. In view of the admitted facts narrated above, this Court is of the view that the impugned order cannot be sustained. Accordingly, the writ petition is allowed and the impugned notice, dated 18.08.2022, is quashed. It is open to the respondents to seek assistance of the Revenue Department to survey the property



W.P.(MD)No.19649 of 2022

and to identify whether there is any encroachment by the petitioner or anyone. It is to be noted that such survey shall be conducted in the presence of the petitioner and the respondents. Upon demarcation of the boundaries of property of the Highways Department, as per the revenue records, the second respondent or anyone, who is authorised by the Government, shall issue show-cause notice and thereafter, pass appropriate orders on merits after hearing the objections of the petitioner and other encroachers. If the encroachment is confirmed after the enquiry, it may be open to the respondents thereafter to pass orders and proceed further for removal of encroachment as it is provided under the statute. No Costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [S.S.Y., J.]
24.08.2022

Index : Yes / No

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W.P.(MD)No.19649 of 2022

S.S.SUNDAR, J.

and

S.SRIMATHY, J.

pm

W.P(MD)No.19649 of 2022

24.08.2022