



W.P.(MD)No.23095 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2022

CORAM

THE HONOURABLE MR.JUSTICE **R.MAHADEVAN**
and
THE HONOURABLE MR.JUSTICE **J.SATHYA NARAYANA PRASAD**

W.P(MD)No.23095 of 2022
and W.M.P.(MD) No.17189 of 2022

S.Rajapandian

... Petitioner

Vs.

The Assistant Divisional Engineer,
O/o. The Assistant Divisional Engineer,
Construction and Maintenance,
Highways Department,
Melur,
Madurai District.

... Respondent

Prayer:- Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the respondent vide his proceedings in Memo No.228/2022/A1/ dated 22.09.2022 and quash the same as illegal.

For Petitioner

: Ms.J.Irfana Fathima

For Respondent

: Mr.G.V.Vairam Santhosh
Additional Government Pleader

* * *



W.P.(MD)No.23095 of 2022

ORDER

(Order of the Court was made by **R.MAHADEVAN, J.**)

WEB COPY

The petitioner has come forward with this writ petition, challenging the order passed by the respondent vide his proceedings in Memo No.228/2022/A1/ dated 22.09.2022, directing the petitioner to remove the encroachment in seven days.

2. Heard Ms.J.Irfana Fathima, learned counsel for the petitioner and Mr.G.V.Vairam Santhosh, learned Additional Government Pleader, who accepts notice on behalf of the respondent. By consent of both sides, this Writ Petition is taken up for final disposal at the time of admission itself.

3. Assailing the impugned order, learned counsel for the petitioner submitted that the impugned eviction notice is against the proviso to Section 28(2) of the Tamil Nadu Highways Act, 2001, which states that if any representation is received within the time prescribed in the show cause notice, it shall be considered by the authority or officer concerned before passing final orders. In this case, though the petitioner has made a representation/



W.P.(MD)No.23095 of 2022

WEB COPY
explanation on 04.08.2022 within 15 days from the show cause notice dated 27.07.2022, the impugned eviction order does not reflect consideration of such explanation of the petitioner. She further submitted that though the petitioner in his explanation stated that if proper survey is conducted by the authorities concerned to ascertain the extent of encroachment, he is ready to co-operate with the authorities to proceed further, but without resorting to survey the land in question, the impugned eviction notice is issued as such, it is violative of the proviso to Section 28(2) of the Act and therefore, it is liable to be set aside.

4. Learned Additional Government Pleader appearing for the respondent, on instructions, submitted that though earlier the survey was conducted properly, in order to give quietus to the issue and to comply with the requirements of the proviso to Section 28(2) of the Tamil Nadu Highways Act, 2001, the authorities would conduct survey in the presence of the petitioner on 03.10.2022 and then will proceed further. The learned counsel for the petitioner also agrees for the same.



W.P.(MD)No.23095 of 2022

5. In view of the above, notice to the petitioner for conducting survey is dispensed with and the authorities concerned shall conduct a survey on 03.10.2022, on which date, the petitioner shall be present and upon survey, if any encroachment by the petitioner is found out, the authorities shall direct the petitioner to remove the encroachment forthwith, failing which, within two weeks thereafter, the encroachment shall be removed by the authorities in accordance with law.

6. The Writ Petition stands disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

[R.M.D., J.] [J.S.N.P., J.]
30.09.2022

Internet : Yes / No
Index : Yes / No
sj

To

The Assistant Divisional Engineer,
O/o. The Assistant Divisional Engineer,
Construction and Maintenance,
Highways Department,
Melur,
Madurai District.



WEB COPY



W.P.(MD)No.23095 of 2022

R.MAHADEVAN, J.

and

J.SATHYA NARAYANA PRASAD, J.

sj

W.P(MD)No.23095 of 2022

30.09.2022