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W.P.(MD)No.12101 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2022

CORAM

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

W.P(MD)No.12101 of 2017

K.K.C.Balaganesan

.. Petitioner

Versus

- 1.The Chief Secretary,
Government of Tamil Nadu,
St. George Fort,
Chennai.
- 2.The Principal Secretary,
Department of Highways and Minor Ports,
Secretariat, St. George Fort,
Chennai.
- 3.The Principal Secretary,
Department of Electricity
& Non Conventional Energy,
St. George Fort, Chennai.
- 4.The Principal Secretary,
Department of Revenue,
Secretariat,
St. George Fort,
Chennai.
- 5.The Director General,
Tamil Nadu State Highways Department,
Integrated Chief Engineer Office,
HRS Campus,
No.76, Sardarpatel Road,
Guindy, Chennai - 25.



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6. The Chief Engineer,
Tamil Nadu State Highways Department
Integrated Chief Engineer Office
HRS Campus,
No.76, Sardar Patel Road,
Guindy, Chennai - 25.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to remove all the encroachments made on both sides of the State Highways, public pathways, streets, Government lands in any manner i.e., in the guise of temples, church, mosque, Gurudhuwara etc., within the State of Tamil Nadu, as per the order of Hon'ble Apex Court in the case of Union of India Vs. State of Gujarat and others dated 29.09.2009 and collect the removal charge from the concerned persons and pass such further or other consequential orders as this Court may deem fit and proper in the circumstances of this case by considering the petitioner's representation dated 15.06.2017.

For Petitioner : Mr.S.M.Anantha Murugan

For Respondents : Mr.P.Thilak Kumar
Government Pleader

ORDER

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

The petitioner has filed this writ petition, in the nature of public interest litigation, for issuance of writ of mandamus directing the respondents to remove all the encroachments on either side of the State Highways, Public pathways, Streets and in the Government lands under the guise of temples, church, mosque, Gurudhuwara etc., within the State of Tamil Nadu, as per the order dated 29.09.2009 passed by



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Hon'ble Apex Court in ***Union of India v. State of Gujarat and others***, and collect the removal charges from the concerned persons, by considering his representation dated 15.06.2017.

2. It is the case of the petitioner that the Tamil Nadu Highways Act, 2001, was enacted with the objective to declare certain highways as State Highways and to prevent and remove the encroachments thereon; and that, the roads declared as State Highways are the properties of the Government and are meant for public purposes. Contrary to the same, there are many encroachments on either side of the roads. Besides this, some portion of the Highways are also being encroached, thereby causing inconvenience to the public and free flow of traffic. However, the authorities concerned have not taken any action against them and the revenue officials have also given patta to the individuals by converting the State Highways land as individual property. In support of the same, the petitioner pointed out that there is an encroachment in the National Highways No.47 running between Kanyakumari and Trivandrum; and that, the land in S.No.D9/74 of Nallur village belonging to the National Highways has been classified as Government Poramboke in the revenue records. Therefore, according to the petitioner, the authorities concerned should remove the encroachments in the State Highways, so as to enable the public to use the road freely, without any hindrance.



3. It is further stated by the petitioner that the root cause of encroachment is the installation of electricity poles in the middle of the Highways by the Tamil Nadu Electricity Board, due to which, the dwellers who put up temporary structures, make it permanent. As a consequence, the public who are the real users of the roads, are put to much hardship. Hence, the authorities in-charge of State Highways Department, are duty bound to remove the encroachments and maintain the public roads properly.

4. The petitioner also stated that the Hon'ble Apex Court in ***Union of India v. State of Gujarat and others, by order dated 29.09.2009***, has directed all the State Chief Secretaries to remove all encroachments in the public street, public space, public roads which are under the guise of temple, church, mosque, gurudwara etc. and file a report. Pursuant to the same, the first respondent issued a Government Order in G.O.No.437, dated 13.09.2010, thereby directing all the department officials including the District Collectors to remove the encroachments in the public streets, road, land etc. However, the said direction has not been complied with in letter and spirit.

5. Narrating all these facts, the petitioner made a representation dated 15.06.2017 to the respondents, requesting to remove all the encroachments in the State Highways. But, there was no response on the said representation. Therefore, this writ petition as a public interest litigation.



6. Heard the learned counsel for the petitioner and the learned Government Pleader for the respondents and also perused the materials available on record.

7. The main grievance of the petitioner is that there are several encroachments on either side of the State Highways, in the guise of temples, church, mosque, etc., thereby causing inconvenience and hindrance to the vehicular traffic and passers-by. The authorities under the Tamil Nadu Highways Act, 2001, who are duty bound to take action for removal of such encroachments, have failed to do so.

8. At this juncture, pertinently, it is to be pointed out that encroachments in any manner by any one, including the Government / local authorities, cannot be granted a stamp of approval. The dilution of law considering the nature of encroachment or who the encroacher is, cannot be allowed. This court, while ruling against encroachments, has held that even if a god commits encroachment, it has to be removed forthwith in the interests of the public. Encroachments under the guise of places of worship on any highway, without permission from the authorities concerned, amount to abuse of religious sentiments and hence, the same cannot be encouraged.

9. Under the Tamil Nadu Highways Act, 2001, the Highways authority is empowered to prevent unauthorised occupation and encroachment on highways and to remove the same. Section 25 mandates the state Highways authorities to periodically conduct inspection with regard to the boundaries of the state Highways



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and ensure that there is no encroachment in the Highways. Further, they have power to remove the unauthorised encroachments in the state Highways without giving any notice to the encroachers and collect cost for the same.

10. However, this court is of the opinion that in the absence of specific details relating to the survey number, Highways/road/pathway in which encroachments were made, the relief sought by the petitioner in this writ petition is omnibus and hence, the same cannot be granted. Therefore, liberty is granted to the petitioner to approach the authorities concerned with detailed particulars, if he is inclined to press this prayer, so as to enable them to take appropriate action, in the manner known to law.

11. With these observations, this writ petition stands disposed of. No costs.

[R.M.D., J.] [J.S.N.P., J.]
22.11.2022

Internet : Yes.
Index : Yes/No

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