



W.P(MD)No.3903 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2023

CORAM:

**THE HON'BLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HON'BLE MRS JUSTICE L.VICTORIA GOWRI**

**W.P(MD)No.3903 of 2023
and
W.M.P(MD)Nos.3739 & 3742 of 2023**

Johnson

:Petitioner

.VS.

1.The Divisional Engineer,
(Highways),
Construction and Maintenance Office,
Pudukkottai,
Pudukkottai District.

2.The Assistant Divisional Engineer,
(Highways),
Construction and Maintenance Office,
Pudukkottai,
Pudukkottai District.

3.The District Sports and Youth Welfare Officer,
District Sports Ground,
Trichirappalli-Ramanathapuram Road,
Pudukkottai.

: Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Proceedings issued by the second respondent in அறிவிப்பு குறிப்பாணை எண்.78/2023/இவஅ/நாள் 14.02.2023 and quash the same on the ground that the same is arbitrary, illegal and without any legal basis and consequently directing the second respondent to permit the petitioner for selling the Nursery Plants Street Shop in Near District Sports Ground, Trichirappalli-Ramanathapuram Road, Pudukkottai.

For Petitioner :Mr.G.Mathavan

For Respondents :Mr.P.Thilakkumar
Government Pleader

ORDER

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

Challenge in the writ petition is the order of the second respondent, dated 14.02.2023 informing the petitioner that since he has not removed the encroachment, the encroachment would be removed and cost of such removal would be recovered from him.

2. The order impugned is issued purportedly in exercise of powers contend in Section 28 of the Tamil Nadu Highways Act. Sub Section 2



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of Section 28 which deals with the removal of encroachment reads as follows:-

“28(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.”

3. A reading of the said proviso would show that the officer in-charge of the removal of encroachment is required to issue show cause notice returnable by 7 days to the encroacher and if the encroacher shows cause, the officer shall consider the cause shown and pass appropriate



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orders before removing the encroachment. Admittedly, the said provision has not been followed in this case. Hence, the order impugned has to be necessarily set aside.

4. Therefore, the writ petition stands allowed and the order impugned in the writ petition, dated 14.02.2023 is set aside. Liberty is reserved to the respondents to take action strictly in accordance with Section 28 of the Tamil Nadu Highways Act. No costs. Consequently, connected miscellaneous petitions are closed.

[R.S.M.,J.] & [L.V.G.,J.]
08.03.2023

Index: Yes/No
Internet: Yes/No
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WEB COPY

To

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(Highways),
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- 2.The Assistant Divisional Engineer,
(Highways),
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WEB COPY



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R.SUBRAMANIAN, J.
AND
L.VICTORIA GOWRI, J.

am

ORDER MADE IN
W.P(MD)No.3903 of 2023

08.03.2023