



W.P.(MD)Nos.5020 and 5026 to 5032 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MRS. JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.5020 and 5026 to 5032 of 2023

and

W.M.P(MD)Nos.4684, 4687 to 4699, 4702 and 4703 of 2023

W.P.(MD)No.5020 of 2023

K.Natarajan

: Petitioner

Vs.

- 1.The District Collector,
Karur District, Karur.
- 2.The Assistant Divisional Engineer,
Highways (Construction & Maintenance),
Karur District,
Karur.
- 3.The Assistant Engineer Highways
(Construction & Maintenance),
West Branch,
Karur District,
Karur.



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4. The Tahsildar,
Pugalur Taluk,
Karur District.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus forbearing the respondents from demolishing or evicting or dispossess the petitioner from his property situated in Survey No.123, Karur Main Road, Velayuthampalayam, Punjaipugalur Taluk, Karur District to an extent of 1962.5 sq.feets

For Petitioner : Mr.M.Shanmugaselvam
For Respondents : Mr.P.T.Thiraviam
Govt. Advocate

COMMON ORDER

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

Mr.P.T.Thiraviam, learned Government Advocate takes notice for the respondents. By consent, these writ petitions are taken up for final disposal at the admissions stage itself.



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2. Challenge in these writ petitions is to the notices issued by the second respondent to all the petitioners requiring them to remove the alleged encroachments made by them between k.m 17/4 and 18/8 on Velayuthampalayam to Noyyal Road, on the ground that the encroached land belongs to the Highways Department.

3. Mr.N.Shanmugaselvam, learned counsel for the petitioners would vehemently contend that there is a complete breach of the provisions Section 28(2) of the Highways Act, 2001 by the respondents. According to the learned counsel, while the power to remove the encroachment is vested in the Highways authority, the same has to be exercised in the manner provided under Section 28(2) of the Act. Section 28(2) of the Act 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



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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.”

4. A bare perusal of the said provision shows that the Highways authority is required to issue notice to the encroacher calling for explanation giving them 7 days time and the proviso obliges Highways authorities to consider the objection, if any, received within the time stipulated and pass appropriate orders. Therefore, an opportunity of hearing before passing a reasoned order is a precondition for the exercise of the power to remove the encroachment under Section 28(2) of the Act.



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5. Admittedly, in the case on hand, such exercise has not been carried out. The Highway authorities has issued notices to the alleged encroachers without even naming them. The issuance of a notice under a provision of an enactment is different from distribution of bit notices for removal of encroachment. Notice must specify at least the person, who has encroached upon the land.

6. The learned Government Advocate is unable to counter the submissions of the learned counsel for the petitioners inasmuch as there is no compliance with the requirements of statute in the action of the respondents.

7. We are in entire agreement with the contentions of the learned counsel for the petitioners. Though the petitioners have sought for a Mandamus forbearing the respondents from demolishing and evicting or dispossessing them from the property, we do not think such a blanket Mandamus could be issued by this Court. We can only observe that there



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cannot be eviction or removal of encroachment except in accordance with Section 28(2) of the Act. The authority is expected to strictly adhere to the provisions of Section 28(2) of the Act before proceeding further with eviction.

8. With the above observation, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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

NCC : Yes/No

Index : Yes/No

Internet : Yes

skn

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