



W.P.(MD) No.7623 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD) No.7623 of 2023
and
W.M.P.(MD) No.7098 of 2023

Raghupathy

... Petitioner

-VS-

The Assistant Divisional Engineer
Highways Construction & Maintenance
Ottanchathiram Taluk
Dindigul District

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records of the respondent in his proceedings in கு.எண்.99/2023/அ1, dated 20.03.2023, and quash the same as non application of mind and without following procedures contemplated in the Tamilnadu Highways Act 2001 in Survey No.71/2, Periyakottai Village, Ottanchathiram Taluk, Dindigul District, within the period stipulated by this Court.



WEB COPY

W.P.(MD) No.7623 of 2023

For Petitioner : Mr.T.Ramasamy
For Respondent : Mr.S.P.Maharajan
Special Government Pleader

ORDER

[Order of the Court was made by R.SUBRAMANIAN, J.]

Mr.S.P.Maharajan, learned Special Government Pleader, takes notice for the respondent.

2. With the consent of both sides, this writ petition is taken up for final hearing at the admission stage itself.

3. Challenge in this writ petition is to the notice dated 20.03.2023, issued by the respondent, under Section 28(2)(ii) of the Tamil Nadu Highways Act, 2001 (for brevity, “the Act”).

4. Though it is claimed that a survey was conducted prior to the issuance of the notice, the procedure prescribed under Clause (ii) of Sub-Section (2) of Section 28 of the Act has not been followed.



WEB COPY

W.P.(MD) No.7623 of 2023

5. Sub-Section (2) of Section 28 of the Act reads as follows:

“28.Prevention of encroachment.- (1) ...

(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.

6. A plain reading of the above provision shows that it is incumbent upon the Highways Authority to issue notice granting seven days time and calling for objections. Any objection received within the seven days time granted is to be considered by the Authority before passing final orders.



W.P.(MD) No.7623 of 2023

WEB COUNCIL

Evidently, such procedure has not been adopted by the Authority in this case.

The Authority straightaway issued the order requiring the petitioner to remove the encroachment.

7. Hence, the writ petition is allowed and the impugned proceedings, dated 20.03.2023, passed by the respondent, are set aside. It is open to the respondent to proceed afresh in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

[R.S.M., J.]

[L.V.G., J.]

05.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

krk

To:
The Assistant Divisional Engineer,
Highways Construction & Maintenance,
Ottanchathiram Taluk,
Dindigul District.



WEB COPY



W.P.(MD) No.7623 of 2023

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

krk

W.P.(MD) No.7623 of 2023
and
W.M.P.(MD) No.7098 of 2023

05.04.2023