



W.P.(MD) No.7648 of 2023

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.7648 of 2023
and
W.M.P.(MD) No.7106 of 2023**

Kathiresan

... Petitioner

-vs-

- 1.The Assistant Divisional Engineer (Highways)
Construction and Maintenance
Uthamapalayam, Theni District
- 2.The Divisional Engineer (Highways)
Construction and Maintenance
Theni
- 3.The Assistant Executive Engineer (Highways)
Construction and Maintenance
Uthamapalayam, Theni District
- 4.The Thasildar
Uthamapalayam Taluk
Theni District

5.M.Paulraj

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records relating to the impugned notice passed by the first respondent in Memo No.9/2023/E.Va.A/dated 20.03.2023 and quash the same as illegal.

For Petitioner : Mr.K.Chengizkhan

For Respondents : Mr.S.P.Maharajan
Special Government Pleader for R1 to R4

ORDER

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

Mr.S.P.Maharajan, learned Special Government Pleader, takes notice for the respondents 1 to 4.

2. Notice to the fifth respondent is deemed unnecessary.

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



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

5. 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.

6. 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:



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Provided that any representation received within the time-limit shall be considered by the authority or officer concerned before passing final orders.

7. 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. 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.

8. Hence, the writ petition is allowed and the impugned proceedings, dated 20.03.2023, passed by the first respondent, are set aside. It is open to the respondents 1 to 4 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

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To:

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Uthamapalayam, Theni District.
- 2.The Divisional Engineer (Highways),
Construction and Maintenance,
Theni.
- 3.The Assistant Executive Engineer (Highways),
Construction and Maintenance,
Uthamapalayam, Theni District.
- 4.The Thasildar,
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and
L.VICTORIA GOWRI, J.

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