



W.P(MD)No.18208 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.P(MD)No.18208 of 2021
and W.M.P.(MD) No.15046 of 2021**

M.Rajendran

... Petitioner

-vs-

- 1.The Divisional Engineer (Highways),
Construction and Maintenance,
Theni.
- 2.The Assistant Divisional Engineer (Highways),
Construction and Maintenance,
Andipatti, Theni District.

3.Manivannan

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records relating to the impugned notice in Ku.No.2/Encroachment/2021/A, dated 28.09.2021 issued by the 2nd respondent and quash the same as it is arbitrary and illegal.

For Petitioner : Mr.R.Suriyanarayanan

For Respondents 1 & 2 : Mr.S.P.Maharajan
Special Government Pleader

For 3rd Respondent : Mr.M.Sankar



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ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

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This Writ Petition is filed challenging the order directing the petitioner to remove the encroachment in the land which is part of road. The impugned order is an order passed under Section 28(2)(II) of State Highways Act, 2001.

2. It is the case of the petitioner that though he has put up a construction in a land which is classified as Highways Poramboke, he has not actually in encroachment of any portion which is used as road. In response to the notice issued by the second respondent, namely, the show cause notice, the petitioner has submitted a reply raising two points. The first point is that the proceedings for removal of encroachment is against the petitioner alone and not in respect of others who have also encroached into the property of State Highways. Secondly, the petitioner has obtained an interim order which will have the effect of staying the proceedings initiated by the respondents to remove the encroachment.

3. As regards the encroachment by others, it is admitted by the petitioner that proceedings have been initiated against few of the encroachers and the petitioner is not singled out. Even assuming that the proceedings have not been initiated for removal of encroachment in some other portion of State Highways, that cannot be a ground to resist or obstruct the proceedings for removal of encroachment, which has been



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lawfully taken. Law is settled by this Court as well as the Hon'ble Supreme Court that the petitioner cannot plead equality in illegality and the person who has encroached the public land cannot be shown any indulgence on such ground.

4. Secondly, the reason given by the petitioner that he has obtained an interim order is again misleading. The Writ Petition, earlier filed by the petitioner in W.P.No.16447 of 2021, challenging similar order passed by the second respondent, was disposed of this Court in the following lines:

“5.Having regard to the submissions made by the learned counsel on either side, since the petitioner was not served any notice prior to the issuance of the impugned order dated 02.09.2021, we direct the petitioner to treat the impugned order dated 02.09.2021 as a show-cause notice and give his reply within seven days from the date of receipt of a copy of this order, as contemplated under Section 28(2) of the Tamil Nadu Highways Act, 2001. On receipt of the reply, the second respondent shall pass final orders on merits and in accordance with law as expeditiously as possible.”

Despite this Court directed the second respondent to pass final orders on merits and in accordance with law after holding an enquiry and giving the petitioner an opportunity to file his objections, the petitioner did not avail



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the opportunity to put forth his objections on merits. He confined his objections to stall the proceedings by misinterpreting the order of this Court. Even before this Court no valid ground is raised.

5. In such circumstances, this Court finds no merit in the Writ Petition. Accordingly, the Writ Petition is dismissed. However, if there are any other encroachment which ought to have been removed, it is open to the petitioner to file a Writ Petition pointing out encroachment by any one. On his representation also, the respondents 1 and 2 shall consider removal of encroachment, if it is found in any other property which is adjacent to the Highway but belongs to the Highways, in accordance with law without any discrimination. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.S.S.R, J.] [D.B.C., J.]
28.08.2023

Index : Yes / No

Neutral Citation : Yes / No

sj

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sj

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