



W.P.(MD)No.17489 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2023

CORAM:

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

W.P(MD)No.17489 of 2023
and
W.M.P(MD)No.14648 of 2023

R.Stalin

... Petitioner

Vs.

1.The Assistant Divisional Engineer,
Highways Department,
(Construction Maintenance),
Musiri, Trichy District.

2.The Tahsildar,
Thottiam Taluk,
Thottiam,
Trichy District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent in connection with the impugned eviction notice issued by him vide his proceedings in Ku.No.106/2023/A1, dated 14.07.2023 and quash the same as illegal, arbitrary and consequently direct the second respondent to conduct a survey based on the petitioner sale deed in Doc.No.1635/2007, 2079/2007, 2088/2007, 3055/2008, on



W.P.(MD)No.17489 of 2023

the file of the Sub-Registrar, Musiri, Trichy District and thereby direct the respondents issue fresh notice of eviction if necessary within the time limit that may be stipulated by this Court.

For Petitioner :Mr.Raja Ravi Varma

For Respondents :Mr.T.Villavan Kothai,
Additional Government Pleader

ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for respondents 1 & 2.

2. This writ petition has been filed against the impugned eviction notice issued by the first respondent vide proceedings, dated 14.07.2023.

3. The grievance of the petitioner is that the first respondent has issued a notice under Section 28(2) of the State Highways Act without giving sufficient opportunity to the petitioner to put-forth his



W.P.(MD)No.17489 of 2023

case. By the impugned order, dated 14.07.2023, the petitioner was directed to remove the encroachment to an extent of 160 sq.ft by constructing a shop and by raising two neem trees in Survey No.580. Though a show cause notice was issued and the petitioner has given a representation claiming title on the basis of the revenue records, the impugned order was passed without considering any of the objections raised by the petitioner. The impugned order does not refer to the objections or explanations offered by the petitioner, pursuant to the show cause notice. Therefore, this Court find that without observing the principles of natural justice, the first respondent has issued the impugned eviction notice. Hence, the impugned order is liable to be quashed.

4. The case of the petitioner is that no survey was conducted before identifying the encroachment and without conducting the survey, the respondents proceeded to determine the encroachment.

5. In the said circumstances, this Court is inclined to dispose of the writ petition on the following lines:-



W.P.(MD)No.17489 of 2023

(i) The writ petition is allowed and the impugned order, dated 14.07.2023 is quashed. However, liberty is given to the respondents to proceed afresh in accordance with law.

(ii) Before initiating the action under Section 28(2) of the State Highways Act, the respondents shall conduct survey through the Tahsildar concerned.

(iii) The Tahsildar on the request of either the petitioner or the first respondent shall conduct the survey in the presence of the petitioner and the second respondent after issuing notice to both parties and furnish a copy of the report to the petitioner and first respondent.

(iv) If there is any encroachment, it is open to the first respondent to take further action in accordance with law after issuing a show cause notice. No costs. Consequently, connected miscellaneous petition is also closed.

[S.S.S.R., J.] [D.B.C., J.]
20.07.2023

Index : Yes / No
Internet : Yes/ No
NCC : Yes/No
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W.P.(MD)No.17489 of 2023

To:

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(Construction Maintenance),
Musiri, Trichy District.
- 2.The Tahsildar,
Thottiam Taluk,
Thottiam,
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W.P.(MD)No.17489 of 2023

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