



W.P.(MD) No.19979 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD) No.19979 of 2021
and
W.M.P.(MD) No.16669 of 2021

D.Kennadi

... Petitioner

-VS-

1.The Assistant Divisional Engineer
Tamil Nadu National Highways Department
NRT Nagar, Theni District, Theni

2.N.A.K.Gopala Krishna Raja

3.The Commissioner
Allinagaram, Theni District

4.Ramasubramanian

... Respondents

[R3 is *suo motu* impleaded vide Court order dated 20.01.2023 and R4 is impleaded vide Court order dated 27.02.2023 in W.M.P.(MD) No.12332 of 2022]

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned order in Na.Ka.No.81/2021/U/ dated 09.09.2021, issued by the



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first respondent herein and consequently direct the first respondent not to disturb the cemeteries belong to the petitioner's father and other schedule class people situated in Survey No.5, Allinagaram Village, Theni Municipality, Theni District.

For Petitioner : Mr.A.Mithun Chakravarthi
For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader for R1
No appearance for R2
Mr.G.Kaleeswaran for R3
Mr.M.Saravana Kumar for R4

ORDER

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

The notice, dated 09.09.2021, issued by the first respondent, under Section 26(2) of the Control of National Highways (Land and Traffic) Act, 2002, is under challenge in this writ petition.

2. No writ as against a show cause notice is entertainable, unless such notice is issued by the incompetent authority having no jurisdiction or tainted with allegation of mala fide.



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3. In the present case, the authorities have identified encroachments in National Highways and consequently, issued the notices affording an opportunity to the encroachers to submit their explanations. Therefore, the petitioner is at liberty to submit his explanation, if any, in response to the impugned notice, within a period of ten days from today and on receipt of any such explanation, the respondents shall consider the same and accordingly, take a decision and proceed further in accordance with law, within a period of four weeks thereafter.

4. With the above liberty granted to the petitioner, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.]

[V.L.N., J.]

06.10.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To:
The Assistant Divisional Engineer,
Tamil Nadu National Highways Department,
NRT Nagar, Theni District, Theni.



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