



W.P.(MD) No.20221 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2023

CORAM:

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

**W.P.(MD) No.20221 of 2023
and
W.M.P.(MD) No.16694 of 2023**

Ayyappan

... Petitioner

-vs-

1.The Divisional Engineer
Highways
Dindigul Division
Dindigul

2.The Assistant Division Engineer (Highways)
Construction and Maintenance
Vathalakundu
Dindigul District

... Respondents

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 order of eviction passed by the second respondent in his proceedings Memo No. 02/2023, dated 09.08.2023 and quash the same.



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W.P.(MD) No.20221 of 2023

For Petitioner : Mr.C.Mayilvahana Rajendran

For Respondents : Mr.J.K.Jayaseelan
Government Advocate

ORDER

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

Mr.J.K.Jayaseelan, learned Government Advocate, takes notice for the respondents.

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

3. This writ petition is filed challenging the notice, dated 09.08.2023, issued by the second respondent, under Section 28(2) of the Tamil Nadu Highways Act, 2001.

4. This Court finds that though the impugned notice appears to be one as a show-cause notice, the terms of the said notice indicate that it is a final order directing removal of encroachments made by the petitioner. Further, the petitioner was not given an opportunity to submit his objections before the impugned notice is issued.



W.P.(MD) No.20221 of 2023

WEB COPY

5. In the said circumstances, this Court is inclined to pass the following orders:

- (i) The writ petition is allowed.
- (ii) The impugned notice, dated 09.08.2023, issued by the second respondent, is quashed, on the ground of violation of principles of natural justice.
- (iii) The impugned notice, dated 09.08.2023, issued by the second respondent, shall be treated as a show-cause.
- (iv) The petitioner is directed to submit his objections / explanations to the show-cause notice, within a period of two weeks from the date of receipt of a copy of this order.
- (v) After receiving the objections / explanations from the petitioner as directed above, it is open to the respondents to pass appropriate orders in accordance with law, after holding an enquiry, if necessary, within a period of two weeks thereafter.



W.P.(MD) No.20221 of 2023

WEB COPY

- (vi) If there is any dispute with regard to boundary of the road as well as the property of the petitioner, the respondents, before passing final order, shall conduct a survey and inspection through the Tahsildar concerned in the presence or after issuing notice to the petitioner, to identify the encroachment.
- (vii) No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.]

[D.B.C., J.]

21.08.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

krk

To:

- 1.The Divisional Engineer,
Highways,
Dindigul Division,
Dindigul.
- 2.The Assistant Division Engineer (Highways),
Construction and Maintenance,
Vathalakundu,
Dindigul District.



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W.P.(MD) No.20221 of 2023

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