



W.P.(MD)No.21746 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2023

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

and

THE HONOURABLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P(MD)No.21746 of 2023

and

W.M.P(MD)No.18143 of 2023

V.Vaiishnavi

... Petitioner

Vs.

1.The Assistant Divisional Engineer(Highways),
Office of the Assistant Divisional Engineer(Highways),
Construction and Maintenance,
Tiruchirappalli – 20.

2.The Divisional Engineer,
Highways Department,
Tiruchirappalli – 20.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus forbearing the respondents in proceeding further in pursuance of the show cause notice, dated 08.08.2023, issued by the first respondent without considering the petitioner's representation dated 11.08.2023.

For Petitioner

:M/s.Vast Law Associates

For R-1 & R-2

:Mr.J.Ashok,
Additional Government Pleader



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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 and 2.

2. This writ petition has been filed by the petitioner seeking for issuance of a Writ of Mandamus forbearing the respondents from proceeding further pursuant to the show cause notice, dated 08.08.2023, issued by the first respondent.

3. The case of the petitioner is that the first respondent has issued the impugned show cause notice in the name of the petitioner's grandfather stating that they have constructed a compound wall in the property belongs to the Highways Department. It is also admitted by the petitioner that the petitioner's grandfather gave his reply/objections, dated 11.08.2023, to the first respondent.

4. It is stated in the affidavit filed in support of this writ petition that on 01.09.2023, the respondents made an inspection of the property bearing Door No.33/34, Trichy and marked to remove the compound wall



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put up in the property. Stating that the compound wall is constructed in the patta land of the petitioner, the above writ petition is filed.

5. The petitioner claims to be the exclusive owner of the property by virtue of a settlement deed executed by the petitioner's grandmother in favour of the petitioner. In the objection raised by the petitioner's grandfather, he has specifically referred to the settlement deed executed by his wife in favour of the petitioner. It is therefore, seen that the objection raised by the petitioner's grandfather was on behalf of the petitioner.

6. In such circumstances, when the person against whom the show cause notice is issued informed the respondents about the actual ownership, the respondents ought to have issued fresh notice to the petitioner if they want to continue eviction proceedings. Therefore, the impugned show cause notice suffers from material irregularity. Therefore, it is liable to be quashed.

7. Accordingly, this writ petition is allowed and the impugned show cause notice, dated 08.08.2023, issued by the first respondent, is hereby quashed. The first respondent shall issue fresh notice to the petitioner after conducting survey through the Town Surveyor concerned. Survey should be conducted after issuing notice to the petitioner and giving



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opportunity to the petitioner to produce the records. Only after conducting survey, the Town Surveyor should draw a report and serve a copy of the same to the petitioner as well as the respondents. Only if the survey report shows any encroachment by the petitioner, the respondent may initiate proceedings under Section 28 of the Tamil Nadu Highways Act, 2001. No Costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [D.B.C., J.]
07.09.2023

Index : Yes / No
NCC : Yes/No

pm

To

- 1.The Assistant Divisional Engineer(Highways),
Office of the Assistant Divisional Engineer(Highways),
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- 2.The Divisional Engineer,
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Tiruchirappalli – 20.



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