



WEB COPY



W.P(MD)No.21750 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2023

CORAM:

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

**W.P(MD)No.21750 of 2023
and W.M.P.(MD) Nos.18148 to 18150 of 2023**

Nachiyar

... Petitioner

-VS-

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Divisional Engineer,
State Highways,
Tirunelveli Division,
Tirunelveli District.

3.The Assistant Divisional Engineer,
State Highways,
Ambasamudram Taluk,
Tirunelveli District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order of 3rd respondent in Se.Mu.Aa.No.343/2023/U dated 01.09.2023 and quash the same.

For Petitioner

: Mr.V.S.Kishok Kumar

For Respondents

: Mr.D.Sachi Kumar
Additional Government Pleader



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ORDER

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

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This Writ Petition has been filed for issuance of a Writ of Certiorari, to quash the impugned order passed by the third respondent in Se.Mu.Aa.No. 343/2023/U dated 01.09.2023. By the impugned order, the third respondent has passed an order directing removal of encroachment on 07.09.2023.

2. Earlier, aggrieved by the order directing the petitioner to remove the encroachment, the petitioner filed a Writ Petition before this Court in W.P. (MD) No.15888 of 2023. This Court by order dated 03.07.2023 disposed of the Writ Petition with a direction to the respondents therein to conduct survey and to identify the encroachment. This Court directed the petitioner to treat the impugned notice dated 03.05.2023 as a show cause notice and disposed of the Writ Petition with a direction to the petitioner to file her reply to the impugned notice and then to conduct an enquiry giving personal hearing to the petitioner. Despite there is a specific observation earlier by this Court that the petitioner should be given opportunity of personal hearing and to conduct an enquiry to consider the objections raised by the petitioner, the impugned order is not one in tune with the directions of this Court earlier.



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3. The contention that the petitioner was not given any personal hearing appears to be true. Learned Additional Government Pleader referred to the report of the Tahsildar dated 18.07.2023, wherein he has indicated that there is an encroachment by the petitioner by constructing a building with asbestos sheet in an extent of about 37 square meters and by putting up other constructions. The petitioner contends that her building is situated beyond a distance of 20 feet from the road. One of the contentions raised by the petitioner is that he is owner of the property in S.No.284, Vickramasingapuram Part I Village, Ambasamudram Taluk, which according to her was acquired by sale deeds. She also contended that the Highways runs only in S.No.61, however, the Tahsildar in her report has indicated that the petitioner is in encroachment of S.No.284. Even though the contention of the petitioner appears to be contrary to the record, the fact that the petitioner was not given a personal hearing is an issue. Therefore, in terms of Section 28 of the State Highways Act, 2001, the third respondent is required to give show cause notice and to conduct enquiry giving personal hearing as directed by this Court. In such circumstances, this Court is unable to sustain the order of the third respondent directing all the encroachers, including the petitioner, to remove the encroachment on 07.09.2023.

4. Further, though the report of the Tahsildar is available in the typed set filed by the petitioner, it is contended by the learned counsel for the



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petitioner that no notice was issued before conducting the survey and therefore the petitioner is also aggrieved by the report of the Tahsildar. It is in the said circumstances, this Court is also of the view that a fresh inspection and survey should be conducted after issuing notice to the petitioner.

5. For the reasons stated above, this Writ Petition is allowed on the short ground that the impugned order is in violation of principles of natural justice in as much as the petitioner was not given a personal hearing as directed by this Court and the impugned order is set aside. The fourth respondent Tahsildar is directed to draw a fresh report after issuing notice to the petitioner and inviting her at the time of making inspection within a period of four weeks from the date of receipt of a copy of this order. On receipt of the report from the fourth respondent, the third respondent is directed to conduct a fresh enquiry, after giving opportunity of personal hearing to the petitioner, and pass a reasoned order after considering the objections or explanation offered by the petitioner. The said exercise shall be completed within a period 12 weeks from the date of service of the report drawn by the Tahsildar as directed by this Court. No costs. Consequently, connected Miscellaneous Petitions are closed.

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

[D.B.C., J.]

05.09.2023

Index : Yes / No

Neutral Citation : Yes / No

sj



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