



W.P.(MD)No.6651 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD)No.6651 of 2016
and W.M.P.(MD) Nos.5761 to 5763 of 2016

S.K.Subadhra

... Petitioner

Vs.

1.The District Collector,
Tirunelveli District.

2.The Thasildhar,
Ambasamudram Taluk,
Tirunelveli District.

3.The Assistant Divisional Engineer,
Highways Department,
Ambasamudram,
Tirunelveli District.

4.The Superintending Engineer,
Highways Department,
Tirunelveli.

...Respondents

(R4 *suo motu* impleaded as per order of this
Court dated 08.11.2023 by SMSJ & VLNJ)



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PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating with the order of the 3rd respondent made in Notice No.100/2014/A1, dt. Nil.04.2016, signed on 02.04.2016 and quash the same as it is arbitrary and illegal.

For Petitioner : Mr.R.Suriya Narayanan

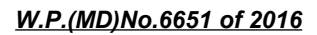
For Respondents : Mr.S.P.Maharajan
Special Government Pleader

ORDER

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

The notice issued under the Tamil Nadu Highways Act in proceedings dated 02.04.2016, issued by the Assistant Divisional Engineer, Highways Department, Ambasamudram, is sought to be quashed in the present Writ Petition.

2. The petitioner has encroached upon the Highways property. On identification, the authorities competent conducted survey and initiated action to remove the encroachments, since the road encroachment would cause greater prejudice to the road users and such properties are required for road expansion project. In respect of the earlier notice dated 21.01.2016, the petitioner filed W.P. (MD) No.1684 of 2016 and this Court disposed of the same on 27.01.2016 with the following observations:-



3. Despite the fact that this Court passed an order affording an opportunity to the petitioner to submit her documents and explanations, the petitioner has chosen to file the present Writ Petition after issuance of the notice dated 04.2016, issued pursuant to the orders of this Court. The very intention of the petitioner to protract the issue is explicit.



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4. In the case on hand and in many other similar cases of removal of encroachments, the authorities competent under the Highways Act and the Land Encroachment Act are committing procedural lapses due to negligence, omissions or commissions and on some occasions intentionally by assisting the encroachers. By virtue of the same, there is a possibility of nexus and corrupt practices between the public officials and the encroachers and therefore, serious actions in this regard against such officials, who all are committing lapses, negligence and dereliction of duty, are warranted.

5. In the event of issuing such defective notices or passing orders without issuing show cause notices, the encroachers are able to secure interim orders from the High Court and such matters are pending for years together resulting in serious consequences in the matter of removal of encroachments and providing public services. If the Highways properties are encroached upon, it will be a blockade for road expansion projects. There are possibilities of road accidents and people are denied to have free access in Highways road and footpaths. The consequences being disastrous the higher officials are duty bound to monitor the actions initiated for removal of encroachments, since the Government had already passed an order constituting Committees to monitor the removal of encroachments.



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6. Commissions and omissions in the matter of following the procedures are undoubtedly paving ways for the encroachers to squat upon the Highways properties for a prolonged period causing infringement of public rights. Thus, disciplinary proceedings against all those authorities for their lapses, negligence and dereliction of duty under the Discipline and Appeal Rules are warranted in the interest of public.

7. In the present case, the earlier notice was challenged by the writ petitioner and this Court passed an order providing opportunity and the petitioner submitted his undated representation pursuant to the impugned notice dated 02.04.2016. The Writ Petition is pending for the past eight years and the photographs produced both by the petitioner and the respondents would reveal that even the foot paths are not spared and greater inconveniences are being caused to the public and the road users in that locality. Thus, we are not inclined to take any lenient view in such matters.

8. Learned Special Government Pleader brought to our notice that even in January, 2022, fresh survey was conducted and encroachments are identified. That being the factum, the petitioner is at liberty to submit his representations /



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explanations along with documents, if any, within a period of one week and thereafter, the authorities are directed to remove the encroachments within a period of three weeks thereafter.

8.The Superintending Engineer, Highways Department, Tirunelveli, has been *suo motu* impleaded as fourth respondent and Mr.S.P.Maharajan, learned Special Government Pleader takes notice for the newly impleaded respondent. The impleadment of the Superintending Engineer is made only to a limited extent to monitor the removal of encroachments in the subject land.

9.Accordingly, the writ petition is disposed of with a direction to the respondents to remove all the encroachments in that locality, within a period of four weeks from the date of receipt of a copy of this order.

10.List the matter on 07.12.2023 for reporting compliance by the Superintending Engineer, Highways Department, Tirunelveli / fourth respondent.

(S.M.S., J.) & (V.L.N., J.)
08.11.2023

NCC : Yes / No
Index : Yes / No
SJ



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Note to Office:

1. Carry out the impleadment as observed in Paragraph No.9.
2. *Mark a copy of this order to the Chief Engineer, Highways Department, Chennai and the Superintending Engineer, Highways Department, Tirunelveli.*

To

- 1.The District Collector,
Tirunelveli District,.
- 2.The Thasildhar,
Ambasamudram Taluk,
Tirunelveli District.
- 3.The Assistant Divisional Engineer,
Highways Department,
Ambasamudram,
Tirunelveli District.
- 4.The Superintending Engineer,
Highways Department,
Tirunelveli.

Copy to

- 1.The Chief Engineer,
Highways Department,
Chennai.



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S.M.SUBRAMANIAM, J.

AND

V.LAKSHMINARAYANAN, J.

SJ

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