



WEB COPY



W.P. Nos. 15192, 15197 & 15203 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

W.P. Nos.15192, 15197 and 15203 of 2024

and

W.M.P.No.16523 of 2024 in W.P.No.15192 of 2024,

W.M.P.No.16531 of 2024 in W.P.No.15197 of 2024

W.M.P.No.16537 of 2024 in W.P.No.15203 of 2024

1.K.M.Kannappan

2.K.Ponni Kannappan

.. Petitioners in
W.P.No.15192 of 2024

1.Nagarajan

2.Devi

.. Petitioners in
W.P.No.15197 of 2024

C.Subramanian

.. Petitioner in
W.P.No.15203 of 2024

Vs.

1.State of Tamil Nadu
through the Secretary to Government,
Highways Department,
Fort St. George, Chennai – 9.

2.The Assistant Divisional Engineer (H) & (CM),
State Highways Department,
Tambaram Sub Division,
Tambaram – 600 045.

3.The District Collector,
Chengalpattu,
Collector Office, GST Road,
Chengalpattu – 603 001.

.. Respondents in
all W.Ps



W.P. Nos. 15192, 15197 & 15203 of 2024

Prayer in W.P.No.15192 of 2024: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records of the impugned order passed by the second respondent – The Assistant Divisional Engineer- (H) & (CM), State Highways Department, Tambaram Sub-Division, Tambaram – 600 045 in Thakkedhu No.234-1/2024/Ee.Ne.Va dated 22.05.2024 in Survey Nos.119/1D, 119/1E1 and 119/1E2, Vengaivasal, Tambaram, Chennai and quash the same.

Prayer in W.P.No.15197 of 2024: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records of the impugned order passed by the second respondent – The Assistant Divisional Engineer- (H) & (CM), State Highways Department, Tambaram Sub-Division, Tambaram – 600 045 in Thakkedhu No.234-1/2024/Ee.Ne.Va dated 22.05.2024 in Survey No.119/1F, Vengaivasal, Tambaram, Chennai and quash the same.

Prayer in W.P.No.15203 of 2024: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records of the impugned order passed by the second respondent – The Assistant Divisional Engineer- (H) & (CM), State Highways Department, Tambaram Sub-Division, Tambaram – 600 045 in Thakkedhu No.234-1/2024/Ee.Ne.Va dated 22.05.2024 in Survey No.119/1A, Vengaivasal, Tambaram, Chennai and quash the same.

For Petitioner : Mr.G.Stanly Hebzon Singh
in all W.Ps

For Respondents : Mr.T.K.Saravanan,
Government Advocate
in all W.Ps



WEB COPY



W.P. Nos. 15192, 15197 & 15203 of 2024

COMMON ORDER

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

This common order will now dispose of the captioned three main 'Writ Petitions' (hereinafter 'WPs' in plural and 'WP' in singular for the sake of brevity, convenience and clarity) and the captioned 'Writ Miscellaneous Petitions' (hereinafter 'WMPs' in plural and 'WMP' in singular for the sake of brevity, convenience and clarity) thereat.

2. Factual matrix qua captioned matters is common. Short facts are that the writ petitioners were visited with 'proceedings dated 22.05.2024 bearing reference Thakkedhu No.234-1/2024/Ee.Ne.Va' (collectively 'impugned proceedings' made by R2 i.e., Assistant Divisional Engineer (H) & (CM), State Highways Department, Tambaram Sub Division, Tambaram; that assailing the impugned proceedings, captioned WPs have been filed by the respective noticees; that vide impugned proceedings, R2 has said that the writ petitioners have caused 'encroachment' qua a 'highway' necessitating action vide 'The Tamil Nadu Highways Act, 2001' (hereinafter 'said Act' for the sake of convenience and clarity); that



W.P. Nos. 15192, 15197 & 15203 of 2024

the grievance of the writ petitioners is that an opportunity to show cause has not been given; that predicated on said grievance, captioned WPs have been filed.

3. Issue notice.

4. Mr.T.K.Saravanan, learned Government Advocate accepts notice for all the respondents in all the captioned three WPs and WMPs thereat.

5. Learned State counsel on instructions submits that the impugned proceedings are show cause notices within the meaning of Section 28(2)(ii) of said Act. A careful perusal of the impugned proceedings brings to light that it is not happily worded as it does not call upon the noticees with specificity and clarity to show cause. In any event, after receipt of impugned proceedings, the noticees have sent representations dated 24.05.2024 and a scanned reproduction of the representations as placed before us are as follows:



W.P. Nos.15192, 15197 & 15203 of 2024

Representation of the writ petitioner in W.P.No.15192 of 2024 :

Recd Post with Ack.Due

Date: 24-05-2024

From
Mr.Kannappan
Mrs.Ponni W/o Kannappan
S.No.119/1D, Patta No.8143
S.No.,119/1E1,Patta No.7495
S.No.119/IE2, Patta No.7496
Vengaivasal, Chennai

To
The Assistant Divisional Engineer (H)&(CM)
Highways Department
Tambaram Sub-Division
Tambaram 600 045

பொருள்: நெடுஞ்சாலைத்துறை - சென்னை (நெ) க(ம)ப மாநகராட்சிகளின் & கோட்டம் - தாம்பரம் (நெ), க(ம)ப, உட்கோட்டம் - நெடுஞ்சாலைத்துறைக்கு சொந்தமான சந்திராஷ்டிரம் - மாம்பாக்கம் சாலை (வழி) வேங்கைவாசல் சாலை கி.மீ 0/0-2/60 வரை உள்ள ஆக்கிரமிப்புகளை அகற்றக் கோருதல் - தொடர்பாக

பயிர்வை: வட்டாச்சியர், தாம்பரம் வட்டம், தாம்பரம் அலுவலகம்
ந.க.எண்.1120/2024/ஆ/4 நாள் 16-05-2024
தங்கள் அலுவலக தகவீது எண்.234-1/2024/இநில/நாள் 22-05-2024

1. The above notice was received by us informing as to the encroachment of highways land of an extent of 00510 Sq.mtr without mentioning the other infrastructure provided by us for the use and enjoyment of the public and by preventing any unauthorized use and occupation and misuse of the highways. In the particular area, the land is of no use for the public as such. Apart from that, there is a room constructed about some 40 years back and high tension EB connection remains in the property. It was duly protected by a compound wall preventing unauthorized use by 3rd parties and we enjoy the same as our own for more than 40 years. The drainage canal was constructed beyond the compound wall recognizing as to my long possession and enjoyment of the property claims to have been owned by highways department.

Kannappan



W.P. Nos. 15192, 15197 & 15203 of 2024

WEB COPY

2. We further state that the compound wall and other infrastructure are in our possession and enjoyment over a period of 40 years and above. The same was transferred to us from my vendor.
3. The notice appears to have been issued based on a reply to the letter under Right to Information Act sought by some third parties. There is no complaint by any person as our encroachment on the land is obstructing the free flow of traffic. There is no complaint that the land under the occupation is needed for the public use. There is no complaint from public or by the department as the occupation of the land in our possession for more than 40 years. Even the encroachment said to have been made by us was found out only now. However, the notice under reply does not contain any reason as why the so called encroachment made by us required to be removed as provided under Sec 41 of TN Highways Act. The time specified by you under the act has not been followed. The 7 days notice for removal of so called encroachment by is against the provisions of TN Highways Act. However, there is a provision to appeal; the same has not been mentioned with name of the appellate authority and the place of appeal to be preferred in the notice under reply. Further, the notice is not in accordance with the provisions of the Act and Rules framed there under. Though the survey was conducted, the same was not done in our presence with notice to the so called occupier of the highways. We have valid defense in the matter so as to explain our case; thereby the notice issued for removal of obstruction does not arise.
4. So far there is no question of our encroachment in the property and there was no complaint claiming that the property belongs to highways department.
5. In any event, the removal of all the infrastructure cannot be done immediately as the time frame given in the notice under reply is not sufficient. Further, we are in long possession and enjoyment of the property and we are entitled to be heard in detail and there is no

K. M. Lakshman



W.P. Nos. 15192, 15197 & 15203 of 2024

WEB COPY

opportunity or provision to appeal to the Tribunal not being shown in the notice under reply before taking any action. Just by mentioning or giving us 7 days notice for removal of so called encroachment by us which is being in our possession for more than 40 years. We have also perfected our title to the property as to our long possession and enjoyment of more than 40 years.

6. Hence there must be proper and detailed enquiry by giving us an opportunity by fixing a date & time to enable us to explain our case before the competent authorities before taking any action being taken as shown in the notice.

7. We hope you will understand the situation and do the needful and oblige.

Thanking you

Mr. Kannappan
Mr. Kannappan

Mrs. Ponni W/o Kannappan
Mrs. Ponni W/o Kannappan



W.P. Nos.15192, 15197 & 15203 of 2024

Representation of the writ petitioner in W.P.No.15197 of 2024 :

Regd Post with Ack.Due

Date; 24-05-2024

From

Mr.Nagarajan
Mrs.Devi W/o of Nagarajan
S.No.119/1F, Patta No.9928
Vengaiwasal, Chennai

To

The Assistant Divisional Engineer (H)&(CM)
Highways Department
Tambaram Sub-Division
Tambaram 600 045

பொருள்: நெடுஞ்சாலைத்துறை - சென்னை (நெ) க(ம)ப மாநகரச்சாலைகள் &
கோட்டம் - தாம்பரம் (நெ), க(ம)ப, உட்கோட்டம் -
நெடுஞ்சாலைத்துறைக்கு சொந்தமான சந்தேகவுழியம் - மாம்பாக்கம்

சாலை (ஹரி) வேங்கைவாசல் சாலை அபி 0/0-2/60 வரை உள்ள
ஆக்கிரமிப்புகளை அகற்றக் கோருதல் - தொடர்பாக.

பார்வை: வட்டாட்சியர், தாம்பரம் வட்டம், தாம்பரம் அவர்களின்
ந.க.எண்.1120/2024/ஆ/4 நாள் 16-05-2024
தயவுசெய்து அலுவலக தகவீது எண்.234-1/2024/இநில/நாள் 22-05-2024

1. The above notice was received by us informing as to the encroachment of highways land of an extent of 00240 Sq.mtr without mentioning the other infrastructure provided by us for the use and enjoyment of the public and by preventing any unauthorized use and occupation and misuse of the highways. In the particular area, the land is in U-Shape and there was no use for the public as such. Apart from that, there is a Transformer and a Vinayagar Temple situated in the land, being used by the public. We are maintaining a garden with a fountain and duly covered by compound wall by my vendor. The drainage canal was constructed beyond the compound wall recognizing as to my long possession and enjoyment of the property claims to have been owned by highways department.

V. Nagarajan
N. Devi



W.P. Nos. 15192, 15197 & 15203 of 2024

WEB COPY

2. We further state that the compound wall and other infrastructure are in our possession and enjoyment over a period of 40 years and above. The same was transferred to us from my vendor.
3. The notice appears to have been issued based on a reply to the letter under Right to Information Act sought by some third parties. There is no complaint by any person as our encroachment on the land is obstructing the free flow of traffic. There is no complaint that the land under the occupation is needed for the public use. There is no complaint from public or by the department as the occupation of the land in our possession for more than 40 years. Even the encroachment said to have been made by us was found out only now. However, the notice under reply does not contain any reason as why the so called encroachment made by ^{us} is required to be removed as provided under Sec 41 of TN Highways Act. The time specified by you under the act has not been followed. The 7 days notice for removal of so called encroachment by is against the provisions of TN Highways Act. However, there is a provision to appeal; the same has not been mentioned with name of the appellate authority and the place of appeal to be preferred in the notice under reply. Further, the notice is not in accordance with the provisions of the Act and Rules framed there under. Though the survey was conducted, the same was not done in our presence with notice to the so called occupier of the highways. We have valid defense in the matter so as to explain our case; thereby the notice issued for removal of obstruction does not arise.
4. So far there is no question of our encroachment in the property and there was no complaint claiming that the property belongs to highways department..
5. In any event, the removal of all the infrastructure cannot be done immediately as the time frame given in the notice under reply is not sufficient. Further, we are in long possession and enjoyment of the property and we are entitled to be heard in detail and there is no



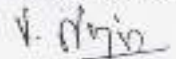
W.P. Nos.15192, 15197 & 15203 of 2024

WEB COPY

opportunity or provision to appeal to the Tribunal not being shown in the notice under reply before taking any action. Just by mentioning or giving us 7 days notice for removal of so called encroachment by us which is being in our possession for more than 40 years. We have also perfected our title to the property as to our long possession and enjoyment of more than 40 years.

6. Hence there must be proper and detailed enquiry by giving us an opportunity by fixing a date & time to enable us to explain our case before the competent authorities before taking any action being taken as shown in the notice.
7. We hope you will understand the situation and do the needful and oblige.

Thanking you


Mr. Nagarajan



Mrs. Devi W/o of Nagarajan

Representation of the writ petitioner in W.P.No.15203 of



W.P. Nos.15192, 15197 & 15203 of 2024

2024 :

WEB COPY

Regd Post with Ack.Due

Date; 24-05-2024

From

Mr. C. Subramanian
S.No.119/1A, Patta No.3531
Vengalvasal, Chennai

To

The Assistant Divisional Engineer (H)&(CM)
Highways Department
Tambaram Sub-Division
Tambaram 600 045

பொருள்: நெடுஞ்சாலைத்தாண்ட - சென்னை (நெ) க(ம)ப மாநகரச்சாலைகள் & கோட்டம் - தாம்பரம் (நெ), க(ம)ப, உட்கோட்டம் - நெடுஞ்சாலைத்தாண்டக்கு சொந்தமான சந்தேஷ்புரம் - மாம்பாக்கம் சாலை (வழி) வேங்கலவாசல் சாலை கி.மீ 0/0-2/60 வரை உள்ள ஆக்கிரமிப்புகளை அகற்றுக் கோருதல் - தொடர்பாக

பார்வை: வட்டாட்சியர், தாம்பரம் வட்டம், தாம்பரம் அலுவலகம்
ந.க.எண்.1120/2024/ஆ/4 நாள் 16-05-2024
தங்கள் அலுவலக தகவிலு எண்.234-1/2024/இநில/நாள் 22-05-2024

1. The above notice was received by us informing as to the encroachment of highways land of an extent of 00275 Sq.mtr without mentioning the other infrastructure provided by me for the use and enjoyment of the public and by preventing any unauthorized use and occupation and misuse of the highways. In the particular area, the land is of no use for the public as such. Apart from that, there is a room constructed about some 40 years back and high tension EB connection remains in the property. It was duly protected by a compound wall preventing unauthorized use by 3rd parties and we enjoy the same as our own for more than 40 years. The drainage canal was constructed beyond the compound wall recognizing as to my long possession and enjoyment of the property claims to have been owned by highways department.



WEB COPY



W.P. Nos.15192, 15197 & 15203 of 2024

2. I further state that the compound wall and other infrastructure are in my possession and enjoyment over a period of 40 years and above. The same was transferred to me from my vendor.
3. The notice appears to have been issued based on a reply to the letter under Right to Information Act sought by some third parties. There is no complaint by any person as our encroachment on the land is obstructing the free flow of traffic. There is no complaint that the land under the occupation is needed for the public use. There is no complaint from public or by the department as the occupation of the land in our possession for more than 40 years. Even the encroachment said to have been made by me was found out only now. However, the notice under reply does not contain any reason as why the so called encroachment made by us required to be removed as provided under Sec 41 of TN Highways Act. The time specified by you under the act has not been followed. The 7 days notice for removal of so called encroachment by is against the provisions of TN Highways Act. However, there is a provision to appeal; the same has not been mentioned with name of the appellate authority and the place of appeal to be preferred in the notice under reply. Further, the notice is not in accordance with the provisions of the Act and Rules framed there under. Though the survey was conducted, the same was not done in our presence with notice to the so called occupier of the highways. We have valid defense in the matter so as to explain our case; thereby the notice issued for removal of obstruction does not arise.
4. So far there is no question of our encroachment in the property and there was no complaint claiming that the property belongs to highways department.
5. In any event, the removal of all the infrastructure cannot be done immediately as the time frame given in the notice under reply is not sufficient. Further, we are in long possession and enjoyment of the property and we are entitled to be heard in detail and there is no

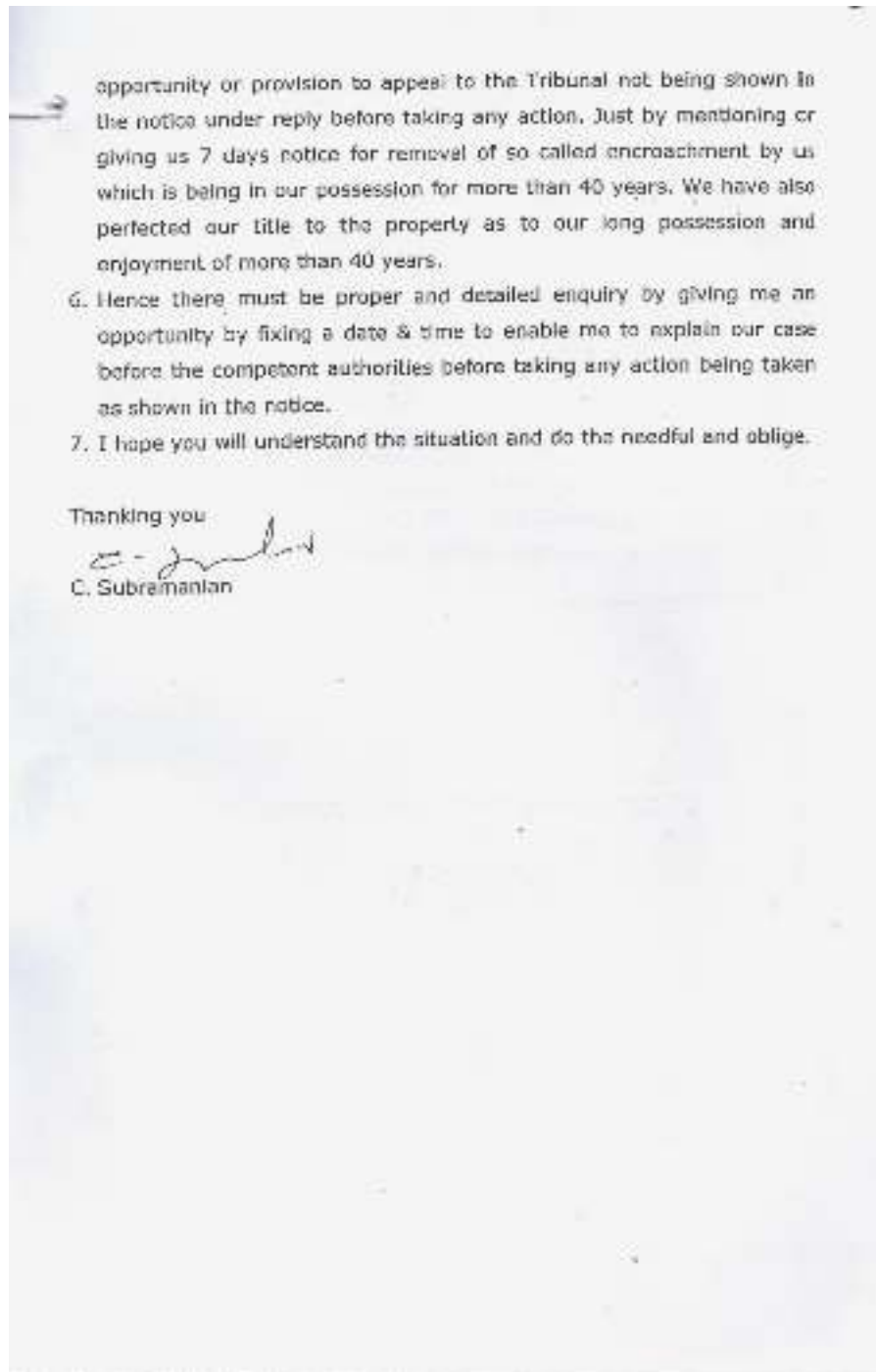
[Handwritten signature]



WEB COPY



W.P. Nos. 15192, 15197 & 15203 of 2024



6. This takes us back to Section 28(2)(ii) of said Act and the proviso thereat which reads as follows:



W.P. Nos. 15192, 15197 & 15203 of 2024

'28.Prevention of encroachment: (1)

WEB COPY

.....

(2) The Highways authority or any person authorised by it in this behalf, may--

(i)

(ii) remove any immovable structure, whether permanent or temporary in nature, encroaching the highway or in the area vested with Government under this Act, after issuing a show cause notice against such removal, returnable within a period of seven days from the date of receipt thereof:

Provided that any representation received within the time limit shall be considered by the authority or officer concerned before passing final orders.'

7. Before we proceed further, we deem it appropriate to say that in the days to come, show cause notices contemplated vide Section 28(2)(ii) of said Act should be couched in a language with clarity and specificity calling upon noticees/addressees 'to show cause'.

8. As regards proviso to Section 28(2)(ii) of said Act, it makes it clear that any representation received within the time limit qua show cause notice shall also be considered by the authority or



W.P. Nos. 15192, 15197 & 15203 of 2024

officer concerned before passing orders. Therefore, it is statutorily necessary that the aforementioned representations dated 24.05.2024 need to be considered by R2.

9. Owing to the limited perimeter and landscape of the captioned WPs, with the consent of both sides, main WPs were taken up in the Admission Board itself.

10. In the light of the narrative, discussion and our dispositive reasoning/views set out supra, the following order is made:

10.1 The three impugned proceedings all dated 22.05.2024 issued by R2 shall now be construed as 'show cause notices' ('SCNs' in plural and 'SCN' in singular for the sake of convenience and clarity) and the noticees/writ petitioners will respond to the same (to R2) within seven days from today i.e., by 20.06.2024;

10.2 The aforementioned representations dated 24.05.2024 shall be considered by R2 within the same time frame i.e., by 20.06.2024;

10.3 The proceedings of R2 pursuant to



W.P. Nos. 15192, 15197 & 15203 of 2024

WEB COPY

considering SCNs and proceedings of R2 qua representations shall be communicated to the writ petitioners under due acknowledgement within five working days from the date on which the proceedings are made;

10.4 Thereafter, it is open to the respondents to proceed in accordance with law subject of course to the outcome of the proceedings in response to the SCNs and the proceedings disposing of the representations. Likewise the rights of the writ petitioners qua the outcome of the SCNs and the proceedings disposing all the representations are also preserved.

11. We make it clear that we have not expressed any view or opinion on the merits of the matter and therefore consideration of the cause to be shown and the representations dated 24.05.2024 shall be on its own merits and in accordance with law *de hors* any observation in this order which has been made for the limited purpose of ensuring compliance qua the procedure contemplated in Section 28(2)(ii) of said Act and the proviso thereat.

12. Captioned three WPs and captioned three WMPs



W.P. Nos. 15192, 15197 & 15203 of 2024

thereat are disposed of in the aforesaid manner. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
13.06.2024

Index:Yes/No
Neutral Citation: Yes/No
mmi

To

- 1.The Secretary to Government,
Highways Department,
Fort St. George, Chennai – 9.
- 2.The Assistant Divisional Engineer (H) & (CM),
State Highways Department,
Tambaram Sub Division,
Tambaram – 600 045.
- 3.The District Collector,
Chengalpattu,
Collector Office, GST Road,
Chengalpattu – 603 001.

**M.SUNDAR.J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**



WEB COPY



W.P. Nos.15192, 15197 & 15203 of 2024

mmi

**W.P. Nos.15192, 15197 and
15203 of 2024**

13.06.2024