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W.P.No.14785 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

W.P.No.14785 of 2024

B.Komathi

... Petitioner

Vs.

1.The District Collector,
Cuddalore District, Cuddalore – 607 001.

2.The Tahsildar,
Bhuvanagiri Taluk, Cuddalore District.

3.The Superintending Engineer
(Water Resources Organisation)
Public Works Department,
Cuddalore District.

4.The Special Tahsildar (LA) Office,
National Highway 45 & 227,
Kattumannarkoil,
Cuddalore District.

5.The Divisional Engineer,
Highways Department,
Chidambaram Division, Cuddalore District.

... Respondents

(R5 impleaded suo motu vide order dated
12.07.2024 in W.P.No.14785 of 2024)

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Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the respondents herein to consider and pass orders on the petitioner's representation dated 19.03.2024 followed by the reminder representation dated 30.04.2024 for removing the encroachment made in the Chidambaram to Kattumannar Highways Road viz., abutting to the petitioner's agricultural land situated in Survey No.47/1B1B and 47/1B2, Chidambaram Taluk, Buthangudi Madhura Allur Village, measuring to an extent of about 0.24 ½ cents bearing Patta No.1223.

For Petitioner : Mr.S.Sarath Kumar

For Respondents : Mr.T.K.Saravanan,
Government Advocate

ORDER

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

In the captioned 'Writ Petition' (hereinafter 'WP' for the sake of brevity), Mr.S.Sarath Kumar, learned counsel for petitioner and



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Mr.T.K.Saravanan, learned Government Advocate for all four respondents are before us.

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 05.07.2024 which reads as follows:

'W.P.No.14785 of 2024

M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

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

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 21.06.2024 which reads as follows:

'W.P.No.14785 of 2024

M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

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

In the captioned matter, the crux and gravamen of the complaint of writ petitioner is alleged encroachment in a Highway.

2. Mr.S.Sarath Kumar, learned counsel on record for writ petitioner submits that alleged encroachment is in the Chidambaram to Kattumannar Highways Road abutting writ



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petitioner's agricultural land.

3. Learned counsel submits that writ petitioner has sent a representation dated 19.03.2024 to the District Collector in which it has been erroneously mentioned that encroachment is in Vaaikkal [வாய்க்கால்] Poromboke. Learned counsel expresses regret for the same and submits that a subsequent representation dated 30.04.2024 was sent wherein writ petitioner has stated that alleged encroachment is in the aforementioned Highway.

4. The above takes us to 'The Tamil Nadu Highways Act, 2001' {hereinafter 'said Act' for the sake of convenience, clarity and brevity}.

5. We find that 'Highway' is defined vide Section 2(12) of said Act and 'Highways authority' is defined vide Section 2(13) of said Act which read as follows:

Section 2(12) of said Act :

2. In this Act, unless the context otherwise requires,-

(1)

(2)

(3)

(4)

(5)

(6)

(7)

(8)

(9)

(10)

(11)

'(12) "highway" means any road, way or land which is declared to be a highway under section 3 and includes--



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- (a) all land appurtenant thereto, whether demarcated or not;
- (b) the slope, berm, burrow pits, foot paths, pavement, whether surfaced or unsurfaced;
- (e) all bridges, culverts, causeways, carriage ways or other structures built on or across such road or way;
- (d) the foot-way attached to any road, public bridge or causeway;
- (e) the drains attached to any such street, public bridge or causeway and the land, whether covered or not by any pavement, verandah or other structure, which lies on either side of the roadway up to the boundaries of the adjacent property, whether that property is private or property belonging to the Central Government or any State Government; and
- (f) all fences, trees, posts and boundaries, hectometer and kilometer stones and other highway accessories and materials stacked on such road or public bridge or causeway,
- but does not include a National Highway declared as such by or under the National Highways Act, 1956 (Central Act 48 of 1956).'

Section 2(13) of said Act :

(13) "Highways Authority" means the officer appointed under sub-section (2) of section 5;

6. Section 28 of said Act reads as follows:

'28. Prevention of encroachment.- (1) The Highways Authority or any person authorised by it in this behalf shall, at such time as may be considered necessary, conduct such checks and periodical inspection of the highway boundaries, with the view to ensure the prevention of unauthorised encroachment and the removal of such encroachment.

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



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(i) remove, without any notice, any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching the highway or in any area where the construction or development of a highway is undertaken or proposed to be undertaken;

(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.'

{underlining made by this Court for ease of reference}

7. A careful perusal of Section 2(21) of said Act which defines 'State Highways Authority' takes us to Section 5(1) of said Act which talks about notification by the Government, appointing an officer of Highways Department by the Government not below the rank of Chief Engineer as State Highways Authority. To be noted, 'Government' has been defined vide Section 2(11) of said Act and it is the State Government.

8. Issue notice.

9. Mr.P.Balathandayutham, learned Special Government Pleader accepts notice for all four respondents.

10. We wanted to know from learned State counsel about whether there is any notification under Section 5(1) of said Act in the light of the aforementioned narrative.

11. Learned State counsel requested for two weeks time to get instructions and revert to this Court.

12. List under the cause list caption 'NOTICE REGARDING



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ADMISSION' in the Regular List a fortnight hence.

List on 05.07.2024.'

2. Today, Mr.S.Sarath Kumar, learned counsel on record for writ petitioner is before us. However, learned State Counsel Mr.T.K.Saravanan, learned Government Advocate, advertng to aforementioned proceedings requests for further time to get written instructions and revert to this Court.

3. As notice regarding admission has been issued, Registry should have shown the name of learned State counsel in the cause list but the same has not been done.

4. Let the course correction be done from next listing.

List one week hence under the same cause list caption i.e., 'NOTICE REGARDING ADMISSION' in the Admission Board i.e., Motion List.

List on 12.07.2024.'

3. Considering the limited legal perimeter within which captioned WP should perambulate, main WP was taken up with the consent of both sides.

4. Today, advertng to the aforementioned earlier proceedings



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and more particularly paragraph 10 of the proceedings made on 21.06.2024 (extracted in aforementioned 05.07.2024 proceedings), learned State counsel submitted, on written instructions, that the authority which is vested with the power to take action under Section 28(2) of said Act is 'Highways Authority' or 'any person authorised by Highways Authority'.

5. Learned State counsel submits that this means that it is the authority vide Section 5(2) of said Act and not Section 5(1). Section 5(2) reads as follows:

'5.Appointment of Highways Authorities

(1).....

(2) The Divisional Engineer, Highways Department of the Government in-charge of each division, shall be the Highways Authority for that division.'

6. Learned State counsel submits that as of today no person has been authorised by jurisdictional Divisional Engineer and therefore the jurisdictional Divisional Engineer is the Highways Authority. Therefore, we deem it appropriate to suo motu implead jurisdictional Divisional



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Engineer, Highways Department as R5. The Divisional Engineer, Highways Department, Chidambaram Division, Cuddalore District is suo motu impleaded as R5.

7. Registry to carry out necessary and consequential amendments in the case file before uploading and before issuing certified copy of the order.

8. Learned State counsel submits on instructions that R5 would only act on 19.03.2024 representation and 30.04.2024 reminder and act in accordance with Section 28(2)(ii) of said Act and proviso thereat. This means that alleged encroachers will be show caused. Learned State counsel submits that the writ petitioner is also an encroacher. We express no opinion on the same but we make it clear that writ petitioner should also be show caused if that be the case. We make it clear that all rights and contentions of all noticees are left open particularly with regard to their responses to show cause notices. In this regard, though obvious we deem it appropriate to write that we have not expressed any view or opinion on the merits of the matter qua alleged encroachment and therefore when show caused this order will neither serve as an impetus nor impede proceedings. We also



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make it clear that if any representation is received within seven days window vide Section 28(2)(ii) of said Act, the same shall be considered by R5 before making final orders.

9. R5 will do well to complete the aforementioned statutory exercise as expeditiously as his business would permit but in any event within twelve weeks from today i.e., by 04.10.2024.

10. Captioned WP is disposed of in the aforesaid manner with the above mentioned simple directive. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
12.07.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

- 1.The District Collector,
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- 2.The Tahsildar,
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- 3.The Superintending Engineer

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(Water Resources Organisation)
Public Works Department,
Cuddalore District.

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

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