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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

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THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

W.P.No.15705 of 2024

S.Lingakumar

... Petitioner

Vs.

1.The District Collector,
Office of the District Collector,
Coimbatore-641 018.

2.The District Revenue Officer,
Collectorate,
Coimbatore-641 018.

3.The Sub-Collector,
Office of the Sub-Collector,
Pollachi.

4.The Tahsildar,
Office of the Tahsildar,
Anamalai-642104.

5.The Assistant Divisional Engineer,

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Highways Department,
(Construction & Maintenance)
Vaalparai Sub-Division,
Minparai Post, Attagatti-642101.

6.The Executive Office,
Kottur Town Panchayath,
Kottir, Malaiyandipatinam,
Pollachi-642114.

7.R.Selvakumar

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of Writ of Certiorari, praying to call for the 5th
respondent's show cause notice vide ku.No.18/2023/E.Va.Tho.A/dated
09.05.2024 and to quash the same as illegal.

For Petitioner	:	Mr.S.Nagarajan
For RR1 to R5	:	Mr.A.Selvendran Special Government Pleader
For R6	:	Mr.Venkateswaran Special Government Pleader

ORDER



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(Order of the Court was made by K.GOVINDARAJAN THILAKAVADI, J.,)

Through this writ petition, the petitioner has challenged the show cause notice dated 09.05.2024 issued by the Assistant Divisional Engineer, Highways Department, (Construction & Maintenance), Vaalparai Sub-Division, Minparai Post, Attagatti.

2.The case of the petitioner is that, the petitioner is the absolute owner of the subject land and he is in possession and enjoyment of the same till date. While so, the above mentioned authority, namely, the 5th respondent herein issued a show cause notice dated 09.05.2024 stating that the petitioner has encroached the road in Survey No.1758 and constructed a concrete building and therefore, ordered to remove the same within seven days from receipt of the said notice or otherwise, the said Authority would remove the encroachment on 17.05.2024 at the cost of the petitioner. Hence, the writ petitioner was constrained to file the above writ petition.



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3. Mr.S.Nagarajan, learned counsel appearing for the petitioner submitted that, the 5th respondent without giving any opportunity to the petitioner to prove his ownership over the subject property, issued the show cause notice predetermining that the petitioner has encroached the subject property.

4.On the other hand, Mr.C.Selvendran, Special Government Pleader appearing for the respondents 1 to 5 and Mr.Venkateswaran, learned Special Government Pleader appearing for the 6th respondent submitted that this writ petition against show cause notice is not maintainable.

5.Heard learned counsel for the parties.

6. The case of the petitioner is that the impugned show cause notice was issued after a decision has already been taken by the authority and therefore, the same is under challenge. Ordinarily writ Court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same *inter alia* appears to have been violating the principles of natural justice or when a notice is issued with premeditation. Keeping in mind all these principles, we have to examine whether it is a fit case for interference.





09.05.2024, it appears that the authority issuing notice already applied its mind and has formed an opinion as regards the subject property to have been encroached by the petitioner.

9. It is pertinent to mention here that the Hon'ble Supreme Court on numerous occasions has upheld that the authorities cannot transgress the boundaries of the show cause notice. In the present case, the show cause notice was issued by the 5th respondent stating that the petitioner has encroached the subject property belonging to the Highways Department and constructed a concrete building and therefore, the same has to be removed by the petitioner within seven days from receipt of the said notice. The petitioner never had any opportunity to defend on the said ground, and therefore, the show cause notice is directly in teeth of the principles of natural justice, namely the principles of audi alteram partem. The show cause notice should serve as a mechanism to afford the recipient an opportunity to present their side of the story, provide clarifications, before any punitive action is taken. By issuing a show cause notice, an authority acknowledges the principle of audi alteram partem, ensuring fairness and due process in its proceedings.



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10. In the present case, the impugned show cause notice does not disclose the material on the basis of which the 5th respondent has reached the conclusion that the petitioner has encroached upon the subject property. The Hon'ble Supreme Court in the case of ***Siemens Ltd. vs. State of Maharashtra*** reported in ***(2006) 12 SCC 33*** even after observing that ordinarily writ Court may not exercise discretion in entertaining the writ petition questioning the notice of show cause held that in certain circumstances, the writ petition can be entertained and one of the situations may be of premeditation and therefore, the writ petition is maintainable.

11. In the case of ***Oryx Fisheries Private Ltd. vs. Union of India and others*** reported in ***(2010) 13 SCC 427***, the Hon'ble Supreme Court in paragraphs 31, 32 and 33, observed as follows:

"31. It is of course true that the show-cause notice cannot be read hyper technically and it is well-settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the



person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show- cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice.

33. The principle that justice must not only be done but it must eminently appear to be done as well is



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equally applicable to quasi-judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it."

12. In view of the above judgments, it is clear that ordinarily writ jurisdiction is not available to challenge the show cause notice, however, subject to certain exceptions. Therefore, we are of the considered opinion that the impugned show cause notice is liable to be quashed and hence, the show cause notice dated 09.05.2024 is set aside. However, since show cause notice is set aside based on the above grounds, we hereby give liberty to the authority to issue a fresh show cause notice to the petitioner within a period of two weeks i.e., on or before 03.07.2024 and the authority may proceed to decide the matter without being influenced by the reasons given in the show cause notice dated 09.05.2024. We are also making it clear that even the subsequent notice may contain reasons for the satisfaction of the authority but may be reasonably wise so as to convey the reasons for issuance of the show cause notice to the petitioner but not indicating or reflecting that the decision has already been taken, nor such notice should be influenced by the show cause notice dated 09.05.2024.



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13. Since it is the challenge to only show cause notice, none of our observation may be interpreted as any opinion on the merit of the case of the Highways Department or of the petitioner. It goes without saying that the petitioner will be free to take all defence in the proceedings. We also make it clear that the authorities concerned can proceed from the stage of show cause notice afresh but strictly in accordance with law by following the fair procedure. After issuance of fresh show cause notice, the learned Special Government Pleader shall file the compliance report by 09.07.2024.

14. The captioned writ petition is disposed of in the above said terms. There is no order as to cost.

M.S.J.,]

[K.G.T.J.,]

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vsn

Index : Yes / No

Speaking / Non-speaking

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