



WEB COPY

W.P.No.18859 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.18859 of 2024

and

W.M.P.No.20698 of 2024

in

W.P.No.18859 of 2024

Karthikeyan
Son of Chenniyappan

.. Petitioner

Vs.

1. The District Collector
District Collector Office
Tiruppur - 601 604.
2. The Divisional Engineer
Highway Department (C & M)
College Road
Tiruppur - 641 603.
3. The Assistant Divisional Engineer
Highway Department (C & M)
Kumaran Road, Tiruppur North
Tiruppur District - 641 603.
4. The Junior Engineer
Highway Department (C & M)
Uthukuli
Tiruppur District.



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5. The Tahsildar
Uthukuli Taluk
Tiruppur District.

6. The Inspector
Kunnathur Police Station
Kunnathur - 638 103.

.. Respondents

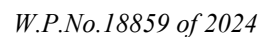
Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records relating to the order passed by the 4th respondent in Ku.No.05-1/Encroachment/2024/E.Po dated 10.06.2024 and to quash the same and to direct the respondents to implement orders passed by the 5th respondent by his proceedings in Na.Ka.No.1256/2022/A3 dated 24.06.2022.

For Petitioner	:	Mr.K.Myilsamy for Mr.S.Panneer Selvam
For Respondents	:	Mr.T.K.Saravanan Government Advocate for R1 to R5 Mr.R.Kishore Kumar Government Advocate (Crl.Side) for R6

ORDER

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

Captioned main 'Writ Petition' {hereinafter 'WP' for the sake of brevity} has been filed assailing an 'order dated 10.06.2024 bearing

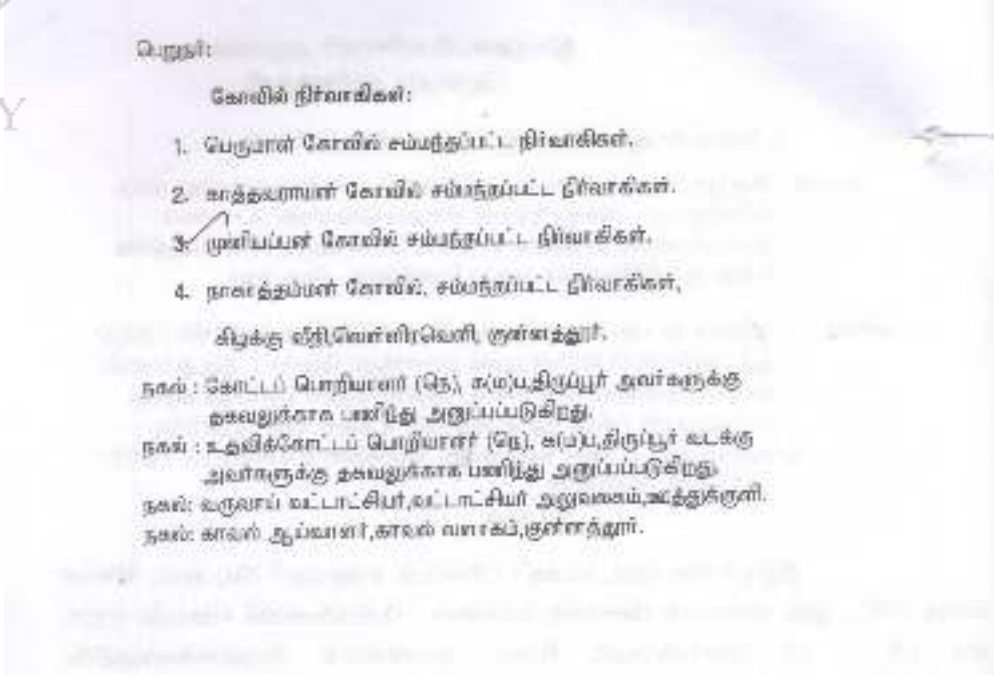
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2. Impugned order says that it has been issued pursuant to an order dated 18.08.2023 in W.P.No.24165 of 2023 being an order made by another Hon'ble Division Bench which is as follows:



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W.P.No.24165 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No.24165 of 2023

Kuppusami
Petitioner

Vs

1.The District Collector,
Tiruppur District, Tiruppur.

2.The Tahsildar,
Uthukuli Taluk,
Uthukuli, Tiruppur District,

3.Karthi
4.Murugesan

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the respondents 1 and 2 to remove the encroachments made by the respondents 3 and 4 in S.F.No.222 situate at Velliravelli Revenue Village, Uthukuli Taluk, Tiruppur District, which is classified as 'Road' in the revenue records in accordance with law.

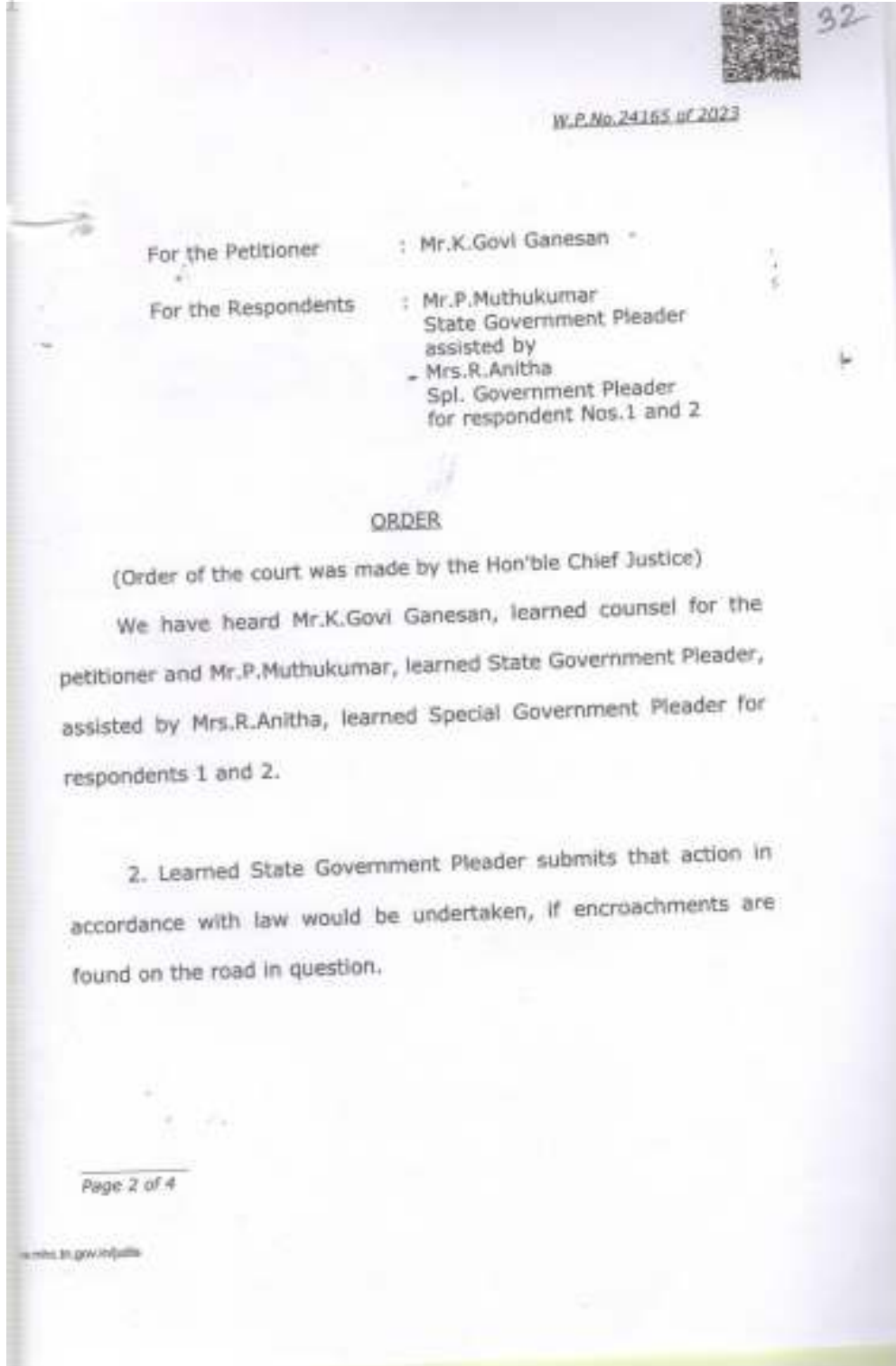
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MAJESTIC IN 2024.08.18



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3. In view of the said statement made by learned State Government Pleader, the writ petition is disposed. There will be no order as to costs.

(S.V.G., C.J.) (P.D.A., J.)
18.08.2023

Index : Yes/No
Neutral Citation : Yes/No
bbr

To:

- 1.The District Collector,
Tiruppur District,
Tiruppur.
- 2.The Tahsildar,
Uthukuli Taluk,
Uthukuli,
Tiruppur District.

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3. To be noted, R4 is not a party in W.P.No.24165 of 2023 and there are two private respondents therein namely, R3 and R4. R3 is Karthi. It is not clear if R3 in W.P.No.24165 of 2023 is writ petitioner herein namely, Karthikeyan.

4. Issue notice to respondents.

5. Mr.T.K.Saravanan, learned Government Advocate accepts notice for respondents 1 to 5 and Mr.R.Kishore Kumar, learned Government Advocate (Crl. Side) accepts notice for R6.

6. Considering the limited scope of the captioned WP, main WP was taken up with the consent of both sides.

7. Learned State counsel submits that impugned notice has been issued under Section 28(2)(ii) of 'the Tamil Nadu Highways Act, 2001' {hereinafter 'Highways Act' for the sake of brevity}.

8. A careful perusal of Section 28(2)(ii) of Highways Act makes it clear that it can be issued by either 'Highways Authority' or 'Any



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person authorized by Highways Authority'. 'Highways Authority' has been defined under Sub-Section (13) of Section 2 of Highways Act and Section 2(13) of Highways Act takes us to sub-section (2) of Section 5 of Highways Act.

9. Section 2(13) of Highways Act reads as follows:

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

10. Section 5(2) reads as follows:

'5 (1)

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

11. A careful perusal of aforementioned provisions makes it clear that Divisional Engineer, Highways Department of Government In-charge of each Division shall be the Highways Authority for that Division. This is obviously not R4. This means that R4 is not the Highways Authority. As regards, any other person authorized, it comes to light in the hearing that R4 does not fall under the category of any other person, who has been authorized.

12. In the light of the narrative thus far, the impugned order



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which has been issued by R4 is without jurisdiction / without authority.

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13. On the aforementioned short point, impugned order is set aside but it is made clear that all rights and contentions of both sides i.e., writ petitioner as well as State and any other person, who is likely to be affected are preserved for State to issue a fresh notice under Section 28(2)(ii) of Highways Act so that the same is issued either by Highways Authority or any other person authorized on behalf of Highways Authority. When State issues such notice afresh, it is open to noticee to raise all contentions as there is an inbuilt safety valve under Section 28(2)(ii) of Highways Act which provides for noticee being show caused as regards the action qua Section 28(2)(ii) of Highways Act.

14. Captioned WP allowed albeit with the aforementioned observations and preservation of rights in the aforesaid manner. Consequently, captioned two Writ Miscellaneous Petitions are disposed of as closed. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
12.07.2024
(2/2)

Index:Yes
Neutral Citation: Yes
Speaking order
mk



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Highway Department (C & M)
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M.SUNDAR.J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

mk

W.P.No.18859 of 2024

12.07.2024

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