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W.P. No. 20816 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2024

CORAM

THE HON'BLE MR.JUSTICE M. SUNDAR

AND

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

W.P. No. 20816 of 2024

&

W.M.P. No. 22772 of 2024

R.S. Palanisamy

..Petitioner

Vs.

1. District Collector,
Collectorate Building,
Coimbatore – 641 018.
2. The Tahsildar,
Taluk Office, Sulur,
Coimbatore – 641 402.



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3. The Project Director,
National Highways Authority of India,
D.No.11/1, Kongu Nagar East,
Ramanathapuram,
Coimbatore – 641 045.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for records pertaining to Notice No. NHAI/PIU CBE/ ENCROACHMENT/NH-544(NH-47)/2024/1015 dated 13.07.2024 issued by the 3rd respondent and to quash the same as without jurisdiction and for consequential orders.

For Petitioner :: Mr. Sharath Chandran

For Respondents :: Mr.P. Balathandayutham,
Special Govt.Pleader for R1 & R2
Mr.Su. Srinivasan,
Standing Counsel for R3 (NHAI)

O R D E R

(Made by **M. SUNDAR,J.**)

Captioned main ‘Writ Petition’ [‘WP’ for the sake of brevity] has been filed with a certiorari prayer assailing a notice dated 13.07.2024 issued by 3rd respondent (The Project Director, National Highways Authority of India, D.No.11/1, Kongu Nagar East, Ramanathapuram,Coimbatore - 641 045)



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under Section 26(2) of 'The Control of National Highways (Land and Traffic) Act, 2002' [hereinafter 'said Act' for the sake of brevity and convenience] alleging unauthorised occupation. (This 13.07.2024 notice shall hereinafter be referred to as 'impugned notice' for the sake of convenience and clarity).

2. Mr. Sharath Chandran, learned counsel for writ petitioner submits that the land in question is S.F. No. 285, situate in Karumathampatti Village, Suler Taluk, Coimbatore District (hereinafter 'said land' for the sake of convenience and clarity). Adverting to impugned notice, learned counsel submitted that while a reading of impugned notice itself makes it very clear that it has been issued under Section 26(2) of said Act, it has straightaway slithered to sub-section (6) of Section 26 of said Act without adhering to sub-sections (3) and (5), more particularly sub-section (3). In this regard, we deem it appropriate to re-produce section 26 of said Act with sub-sections (1) to (6) thereat, we do so and the same read as follows:

'26. Removal of unauthorised occupation



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(1) Where the Highway Administration or the officer authorised by such administration in this behalf is of the opinion that it is necessary in the interest of traffic safety or convenience to cancel any permit issued under sub-section (2) of section 24, it may, after recording the reasons in writing for doing so, cancel such permit and, thereupon, the person to whom the permission was granted shall, within the period specified by an order made by the Highway Administration or such officer restore the portion of the Highway specified in the permit in such condition as it was immediately before the issuing of such permit and deliver the possession of such portion to the Highway Administration and in case such person fails to deliver such possession within such period, he shall be deemed to be in unauthorised occupation of highway land for the purposes of this section and section 27.

(2) When, as a result of the periodical inspection of Highway land or otherwise, the Highway Administration or the officer authorised by such Administration in this behalf is satisfied that any unauthorised occupation has taken place on highway land, the Highway Administration or the officer so authorised shall serve a notice in a prescribed form on the person causing or responsible for such unauthorised occupation requiring him to remove such unauthorised occupation and to restore such highway land in its original condition as before the unauthorised occupation within the period specified in the notice.

(3) The notice under sub-section (2) shall specify there in the highway



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land in respect of which such notice is issued, the period within which the unauthorised occupation on such land is required to be removed, the place and time of hearing any representation, if any, which the person to whom the notice is addressed may make within the time specified in the notice and that failure to comply with such notice shall render the person specified in the notice liable to penalty, and summary eviction from the highway land in respect of which such notice is issued, under sub-section (6).

(4) The service of the notice under sub-section (2) shall be made by delivering a copy thereof to the person to whom such notice is addressed or to his agent or other person on his behalf or by registered post addressed to the person to whom such notice is addressed and an acknowledgement purporting to be signed by such person or his agent or other person on his behalf or an endorsement by a postal employee that such person or his agent or such other person on his behalf has refused to take delivery may be deemed to be prima facie proof of service.

(5) Where the service of the notice is not made in the manner provided under sub-section (4), the contents of the notice shall be advertised in a local newspaper for the knowledge of the person to whom the notice is addressed and such advertisement shall be deemed to be the service of such notice on such person.

(6) Where the service of notice under sub-section (2) has been made under sub-section (4) or sub-section (5) and the unauthorised occupation on the highway land in respect of which such notice is



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served has not been removed within the time specified in the notice for such purpose and no reasonable cause has been shown before the Highway Administration or the officer authorised by such Administration in this behalf for not so removing unauthorised occupation, the Highway Administration or such officer, as the case may be, shall cause such unauthorised occupation to be removed at the expenses of the Central Government or the State Government, as the case may be, and impose penalty on the person to whom the notice is addressed which shall be five hundred rupees per square metre of the land so unauthorisedly occupied and where the penalty so imposed is less than the cost of such land, the penalty may be extended equal to such cost.

3. In the light of language in which sub-section (3) of Section 26 of said Act is couched, issue notice.

4. Mr.P. Balathandayutham, learned Special Government Pleader accepts notice for 1st and 2nd respondents and Mr.Su. Srinivasan, learned Standing Counsel accepts notice for 3rd respondent/‘National Highways Authority of India’[‘NHAI’ for the sake of brevity].

5. Considering the point that is being canvassed, all the



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aforementioned three learned counsel consented for main WP being taken up and heard out in the Admission Board.

6. Before we proceed further, we notice that there are atleast three earlier WPs qua the subject matter. Therefore, for the purpose of specificity and clarity, we deem it appropriate to extract and reproduce the orders in the aforementioned three WPs.

7. WP No. 999 of 2019 was filed by writ petitioner herein (Palanisamy) with a mandamus prayer regarding transfer of patta qua said land. This WP along with WMP thereat was disposed of by a Hon'ble Single Judge of this Court in and by an order dated 14.02.2019 and a scanned reproduction of the order is as follows:



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.999 of 2019

and

W.M.P.No.1115 of 2019

R.Palanisamy

...Petitioner

Vs.

1. State of Tamilnadu
rep. by its Secretary to Government
Department of Revenue,
St.George Fort,
Chennai - 600 009.

2. The District Collector,
Coimbatore District,
Coimbatore.

3. The District Revenue Officer,
Coimbatore District,
Coimbatore.

4. The Tashildhar,
Sulur Taluk,
Coimbatore District.

...Respondents

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Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Mandamus, to direct the respondents 1 to 4 to
transfer the DL Patta No.11 in TNTR No.3000 & 3001/84 dated 13.12.1974 in
favour of the petitioner to the land belongs to the petitioner in S.F.No.285



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of Karumathupatty Village, Sular Taluk, Coimbatore District.

For Petitioner : Mr.S.Sithirai Anandam

For Respondents : Mr.S.Soundararajan,
Government Advocate

ORDER

The petitioner has filed this writ petition to direct the respondents 1 to 4 to transfer patta in his favour in respect of the property in S.F.No.285 of Karumathupatty Village, Sular Taluk, Coimbatore District.

2. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

3. It is claimed by the petitioner that he purchased the subject matter property from his vendor and consequent upon such purchase, he made a request for transfer of patta through his representation dated 20.02.2017. The petitioner has also sent a legal notice dated 02.04.2018 to the respondents. The grievance of the petitioner is that the said request has not been considered so far.

4. This Court, at this stage, is not expressing any view on the merits of the claim made by the petitioner, as it is for the 4th respondent to consider and decide the same on merits and in accordance with law. Accordingly, the writ petition is disposed of, only by directing the 4th

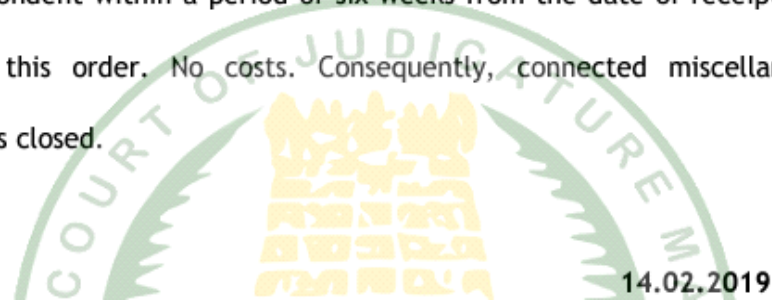


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respondent to consider the representation of the petitioner dated 20.02.2017, followed by a legal notice dated 02.04.2018, and pass orders on the same on merits and in accordance with law, after hearing the petitioner and the rival claimants, if any. Such exercise shall be done by the 4th respondent within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.



8. Aforementioned order speaks for itself as it had directed 4th respondent thereat (2nd respondent before us) i.e., jurisdictional Tahsildar to consider writ petitioner's representation dated 20.02.2017 and pass appropriate orders after giving due opportunity of hearing to writ petitioner and rival claimants, if any, within a period of six weeks. Orders were not passed necessitating the writ petitioner (R.S. Palanisamy) to file another WP along with 6 others i.e., WP No. 1823 of 2024 and this WP No. 1823/2024 along with WMP thereat came to be disposed of by another Hon'ble Single Judge of this Court in and by an order dated 29.02.2024 and a scanned reproduction of the same is as follows:

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W.P. No. 20816 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No. 1823 of 2024

and

W.M.P.No.1887 of 2024

1.R.S.Palanisami
2.R.Palanisami
3.R.Natarajan
4.R.M.Ramasamy
5.P.S.Natarajan
6.S.Palanisami
7.P.S.Ramasamy

... Petitioners

versus

1.The District Collector,
Coimbatore.

2.The Tahsildar,
Sulur,
Coimbatore District.

.... Respondents

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Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to transfer the Patta No.11 of 1974 in the names of the petitioners in respect of the land in S.No.285 situated at Karumathampatti Village, Sulur Taluk, Coimbatore District based on the petitioner's representation dated 22.11.2023 as per order in W.P.No.999 of 2019, dated 14.2.2019.

For Petitioners : Mr.S.Sithirai Anandan
For Respondents : Mr.T.Arun Kumar
Additional Government Pleader

ORDER

This writ petition has been filed seeking for issuance of a writ of mandamus, directing the respondents to transfer the Patta in Patta No.11 of 1974 in the names of the petitioners in respect of the land in S.No 285 situated at Karumathampatti Village, Sulur Taluk, Coimbatore District,

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W.P.No.1823 of 2024

based on the petitioner's representation dated 22.11.2023 and as per order in

W.P.No.999 of 2019, dated 14.2.2019.

2. The case of the petitioners is that earlier the second petitioner herein has made a request for transfer of Patta in respect of the subject property through his representation dated 20.02.2017, but there was no response from the respondents and hence, the petitioner has filed a writ petition in W.P.No.999 of 2019. This Court, by order dated 14.02.2019, directed the fourth respondent therein/Tahsildar, Sular to consider the representation of the petitioner and pass appropriate orders, after giving due opportunity of hearing to petitioner and the rival claimants if any, within a period of six weeks. Since the fourth respondent therein has not passed any final orders, the petitioners have given a fresh representation to the respondents on 22.11.2023. The grievance of the petitioner is that the said request has not been considered so far.



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W.P.No.1823 of 2024

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3. When the matter was taken up for hearing, this Court directed the respondents to file counter affidavit. Despite giving opportunity, the respondents have not filed counter affidavit.

4. Since this writ petition is filed for Mandamus simpliciter, to direct the respondents to consider the representation of the petitioner, this Court, without expressing any view or opinion with regard to the merits of the case, directs the respondents to consider the representation of the petitioner dated 22.11.2023, after giving notice to the petitioners as well as rival claimants/interested parties/objectors/aggrieved parties/adjacent owners if any, as the case may be and after conducting an enquiry into the matter and pass appropriate orders on merits and in accordance with law. Such exercise shall be completed within a period three months from the date of receipt of a copy of this order.



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W.P.No.1823 of 2024

5. With the above directions, this Writ Petition is disposed of. There

shall be no order as to costs.

6. W.M.P.No.1887 of 2024, is ordered on payment of separate Court

fees by each of the petitioners.

29.02.2024

Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

ms

To

1.The District Collector,
Coimbatore.

2.The Tahsildar,
Sulur, Coimbatore District.

9. A careful perusal of aforementioned order makes it clear that Hon'ble Single Judge had referred to order dated 14.02.2019 made in WP



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No. 999 of 2019 and thereafter directed both respondents namely, District Collector, Coimbatore and Tahsildar, Sulur, Coimbatore, to consider the representation of writ petitioner being representation dated 22.11.2023 after giving notice to writ petitioner as well as rival claimants/interested parties/objectors/aggrieved parties/adjacent owners, if any.

10. Though the aforementioned directive is to both District Collector and Tahsildar, we are informed that jurisdictional Tahsildar namely, 2nd respondent before us disposed of 22.11.2023 representation in and by an order dated 12.06.2024 and a scanned reproduction of disposal order of jurisdictional Tahsildar is as follows:



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குலார் வட்டாட்சியர் அவர்களின் செயல்முறை ஆணை
முன்னிலை திரு. ச. நனசேகர்

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ந.க. எண்:6313/2023/அ2 நாள்: 12.06.2024

- பொருள் வழக்கு - கோயம்புத்தூர் மாவட்டம் - குலார் வட்டம் -
சோமனூர் கிராமம் - க.ச.எண்.285 - திரு.பழனிச்சாமி
உள்ளிட்ட 7 நபர்கள் பட்டா மாறுதல் கோரி -
உயர்நீதிமன்றத்தில் W.P 1823/2024இன்படி வழக்கு
தொடர்ந்தது - தீர்ப்பு வரப்பெற்றது -இறுதி ஆணை
பிறப்பிக்கப்படுகிறது - தொடர்பாக.
- படிக்க 1. மாண்புமிகு மெட்ராஸ் உயர்நீதிமன்றத்தின் வழக்கு
எண்.W.P 31782/2023, தீர்ப்பு நாள்: 07.11.2023
2. இவ்வலுவலக கடிதம் ந.க. 6313/2023/அ2,
நாள்: 19.02.2024
3. மாண்புமிகு மெட்ராஸ் உயர்நீதிமன்றத்தின் வழக்கு எண்.
W.P 1823/2024, தீர்ப்பு நாள்: 24.02.2024
4. கோயம்புத்தூர் இந்திய தேசிய நெடுஞ்சாலை ஆணைய
திட்ட இயக்குநர் அவர்களின் கடிதம் NHAI/DGM
(T)&PD/PIU CBE/2024/329, நாள். 06.03.2024
& 29.04.2024
5. இவ்வலுவலக விசாரணை அழைப்பாணை ந.க.
6313/2023/அ2, நாள்: 26.04.2024
6. இவ்வலுவலக விசாரணை அழைப்பாணை
ந.க. 6313/2023/அ2, நாள்: 13.05.2024
7. மாநில நெடுஞ்சாலைத் துறை உதவிப் பொறியாளர், குலார்
அவர்களின் கடிதம் க.எண்: 15/2024/உபொ,
நாள்: 17.05.2024
8. இவ்வலுவலக கடித ந.க.6313/2023/அ2, நாள்: 30.05.2024
9. இவ்வலுவலக கடித ந.க.6313/2023/அ2, நாள்: 31.05.2024

கோயம்புத்தூர் மாவட்டம், குலார் வட்டம், கருமத்தம்பட்டி குருப் சோமனூர்
கிராமம், புல எண்.285, தேசிய நெடுஞ்சாலைக்கு சொந்தமான இடத்தை
திரு.சுப்பையாகவுண்டர் உள்ளிட்ட 6 நபர்கள் ஆக்கிரமிப்பு செய்துள்ளதாக பார்வை
(1)-இல் காணும் மாண்புமிகு மெட்ராஸ் உயர் நீதிமன்றத்தில் நீதிப்பேராணை மனு
எண். W.P.No.31782/2023-இன் படி வழக்கு தொடரப்பட்டு, மேற்படி
வழக்கிற்கான தீர்ப்புரை உயர்நீதிமன்றத்தால் கடந்த 07.11.2023 தேதியன்று
கீழ்க்கண்டவாறு வரப்பெற்றது.

"It is submitted by learned-counsel for the first respondent that the first
respondent would inspect the land and if encroachment is found, necessary steps,
in accordance with law, would be undertaken for the removal of the encroachment
expeditiously"



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2) இதன்படி, பரிசீலனை செய்ததில் கோயம்புத்தூர் மாவட்டம், குலூர் வட்டம், கருமத்தம்பட்டி குருப் சோமனூர் கிராமம் புல எண்.285 நெ.காலையில் பு.தென் 1.52.0 விஸ்தீரணம் கொண்ட இடமானது கிராமக்கணக்கு ஆவணங்களின்படி அரசு புறம்போக்கு - சாலை என்ற வகைப்பாட்டில் பதிவாகியுள்ளது. மேற்படி புலமானது நானது தேதியில் தேசிய நெடுஞ்சாலை கட்டுப்பாட்டில் உள்ளமையாலும் மேற்படி வழக்கின் முதல் பிரதிவாதி என்ற பண்பில் திட்ட இயக்குநர், இந்திய தேசிய நெடுஞ்சாலை ஆணையம் (NHAI) அவர்களால் நீதிமன்ற உத்தரவு அடிப்படையில் மேற்படி புல எண் 285-இல் ஆக்கிரமிப்பு ஏதும் செய்யப்பட்டுள்ளதா என்பதை உறுதி செய்து அதன் மீது உடனடியாக நடவடிக்கை மேற்கொள்ளுமாறு பார்வை (2)-இல் காணும் கடிதம் மூலம் NHAI-திட்ட இயக்குநர், கோயம்புத்தூர் அவர்களுக்கு ஏற்கனவே தெரிவிக்கப்பட்டு இருந்தது. மேலும், இந்நேரவில் பார்வை (4)-இல் காணும் கடிதத்தில் கோரிய கூடுதல் விவரங்களின் பேரில் பதில் அறிக்கையினை மேற்படி ஆணையத்திற்கு பார்வை (9)-இல் காணும் கடிதம் மூலம் அனுப்பப்பட்டு உள்ளது.

3) மேலும், இந்நேரவில் மேற்படி கருமத்தம்பட்டி குருப் சோமனூர் கிராமம், க.ச.எண்.285-இல் திரு.பழனிச்சாமி உள்ளிட்ட 6 நபர்கள் பட்டா மாறுதல் கோரி மக்களுடன் முதல்வர் முகாமில் மனு எண்: 214, (TN / REV / CBE / MM / 22-NOV-23 / 6470201 / 2023 / 22/11) அன்று கொடுக்கப்பட்ட மனு மீது நடவடிக்கை மேற்கொள்ள கோரி மாண்புமிகு சென்னை உயர்நீதிமன்றத்தின் வழக்கு எண்.V.P 1823/2024-இன் படி வழக்கு தொடரப்பட்டு, மேற்படி வழக்கிற்கான தீர்ப்புரை உயர்நீதிமன்றத்தால் 29.02.2024 தேதியன்று கீழ்க்கண்டவாறு வரப்பெற்றது.

"Since this writ petition is filed for Mandamus simpliciter, to direct the respondents to consider the representation of the petitioner, this Court, without expressing any view or opinion with regard to the merits of the case, directs the respondents to consider the representation of the petitioner dated 22.11.2023, after giving notice to the petitioners as well as rival claimants/interested parties/objectors/aggrieved parties/adjacent owners if any, as the case may be and after conducting an enquiry into the matter and pass appropriate orders on merits and in accordance with law. Such exercise shall be completed within a period three months from the date of receipt of a copy of this order"

மேற்படி நீதிமன்ற ஆணையானது கடந்த 24.04.2024 அன்று மாண்புமிகு மெட்ராஸ் உயர்நீதிமன்ற இணையதளத்தில் இருந்து பதிவிறக்கம் செய்யப்பட்டது.



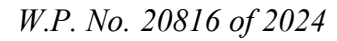
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4) இதன்பேரில், மனுதாரர்கள் திரு. பழனிசாமி மற்றும் 6 நபர்கள் கடந்த 03.05.2024 அன்று விசாரணை செய்யப்பட்டனர். மேற்படி விசாரணையில் மனுதாரர்கள் புல எண்: 285 நெ. காலையில் தங்களுக்கு உரிமையான பரப்பிற்கு ஆவணங்களாக கடந்த 1361 பசலியில் (ஆண்டு 1951) செட்டில்மெண்ட் ஐமாபந்தி சிட்டா நகல், மின் இணைப்பு இரசீது, குடிநீர் வரி இரசீது, வீட்டுவரி இரசீது எனத் தெரிவித்து நகல்களை சமர்ப்பித்துள்ளனர். மனுதாரர்கள் அளித்த செட்டில்மெண்ட் ஐமாபந்தி சிட்டா ஆவணத்தை பரிசீலனை செய்ததில் மேற்படி 10(1) கைச்சிட்டா ஆவணமானது சிதிலமடைந்து கையொப்பம் இட்டவர் விவரம் தெளிவாக இல்லாமல் உள்ளது. இது தொடர்பாக கிராம ஆவணங்களான அ பதிவேடு, அடங்கல், கிராம புல வரைபடம் மற்றும் இலவச வீட்டுமனை ஒப்படை பதிவேடு ஆகிய ஆவணங்கள் பரிசீலனை செய்ததில் மேற்படி புல எண்: 285-நெ.காலையில் எவ்வித வகைப்பாடு மாறுதல்களோ இலவச வீட்டுமனைப்பட்டாக்களோ வழங்கப்படவில்லை என்பது கிராம ஆவணங்களில் பரிசீலனை செய்ததில் தெரியவருகிறது.

5) மேலும், கடந்த 06.05.2024 அன்று நடைபெற்ற சோமனூர் கிராம பொதுமக்கள் கருத்துக் கேட்பு கூட்டத்தில் சோமனூர் கிராமம், புல எண்: 285-இல் அடிக்கடி விபத்துக்கள் நடைபெறுவதாகவும் "மேலும் மேற்படி புலம் 285 தேசிய நெடுஞ்சாலை மற்றும் மாநில நெடுஞ்சாலை சந்திக்கும் இடமாக இருப்பதால் அங்கு போக்குவரத்து நேரிசல் அதிகளவில் ஏற்படும் சூழல் உள்ளது என தெரிவித்து இதுதொடர்பாக பல்வேறு சாலை விபத்துகள் குறித்த செய்தி நறுக்குகளை சமர்ப்பித்துள்ளனர். மேலும், அந்த பகுதியில் கழிவறை வசதி இல்லாததாலும், பேருந்து நிறுத்தம் வசதி இல்லாததாலும், புல எண்: 285-நெ காலையில் உள்ள ஆக்கிரமிப்பினை அகற்றும் பட்சத்தில் அவ்விடத்தில் கழிவறை மற்றும் பேருந்து நிறுத்தம் வசதிகள் செய்ய இயலும் என கோரிக்கை விடுத்தனர்.

6) மேலும், இந்நேர்வு தொடர்பாக, புல எண்: 285-இல் உள்ள ஆக்கிரமிப்பை அகற்றுமாறு மாண்புமிகு மெடராஸ் உயர்நீதிமன்ற நீதிபேராணை எண்: 1823/2024 தொடர்ந்த திரு. பிரபாகரன் என்பவரை கடந்த 07.05.2024 அன்று விசாரணை செய்ததில் மேற்படி விசாரணையில், சோமனூர் கிராமம், புல எண்: 285 நெடுஞ்சாலைக்கு சொந்தமானது என்றும் மேற்படி இடத்தில் ஆக்கிரமிப்பு செய்யப்பட்டுள்ளதை அகற்றுமாறும், அதற்கான ஆவணங்களாக தனியார் வழக்கு தொடர்ந்த வழக்கின் தீர்ப்பு நகல் சமர்ப்பித்துள்ளார்.



1. ஈவட்ட ஆட்சி, கோயம்புத்தூர்
2. வகுப்புகள் கோட்டாட்சி, கோயம்புத்தூர் நெருங்க
3. சிட்ட இயக்குக, இப்போது கோயம்புத்தூர் ஆய்வகம் (NIAU)
4. உதவிப் பொருள், குடுகுச்சி, உதவி, உதவி



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11. Thereafter, one D. Prabakaran filed WP. No. 31782 of 2023 with a prayer to direct official respondents to remove alleged encroachments qua said land. To be noted, said land is S.F.No.285 in Karumathampatti Village, Sulur Taluk, Coimbatore District as already alluded to earlier in this order and it is the stated position of 3rd respondent that it is an encroachment qua NH-47 at what is known as Karumathampatti Four Road Junction. In this WP No. 31782 of 2023, the sole writ petitioner before us was 10th respondent but the writ petition came to be disposed of without notice to private respondents including 10th respondent and a scanned reproduction of the order of Hon'ble Division Bench dated 07.11.2023 in the said WP is as follows:



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W.P.No.31782 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.31782 of 2023

D.Prabakaran

.. Petitioner

Vs.

1. The National Highways Authority of India
Rep. by Deputy General Manager & Project Director
Project Implementation Unit
No.9/9A, 4th Cross
Kothari Layout, B.R.Nagar Road
Opp. To Stock Exchange, Coimbatore.
2. The District Collector
Coimbatore District.
3. The Revenue Divisional Officer
Coimbatore South, Coimbatore District.
4. The Tahsildar
Sulur Taluk, Coimbatore District.
5. Poongodi
6. Krishnasamy
7. Palanisamy
8. Natarajan

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9. Subbaya Gounder

10. R.S.Palanisamy

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus, directing the respondents 1 to 4 to remove the encroachments in N.H.-47 Sengappalli-Valayar at Karumathampatti Four Road Junction in S.F.No.285 of Karumathampatti Village, Sulur Taluk, Coimbatore Taluk by considering petitioner's representation dated 21.03.2017 and proceedings of the third respondent dated 17.02.2023 in Na.Ka.No.3290/2022/A2.

For the Petitioner : Mr.R.Prabakar

For the Respondents : Mrs.S.R.Sumathy
Standing Counsel
for R1

Mr.P.Muthukumar
State Government Pleader
for R2 to R4

ORDER

(Made by the Hon'ble Chief Justice)

Heard Mr.R.Prabakar, learned counsel for the petitioner, Mrs.S.R.Sumathy, learned Standing Counsel for respondent 1 and Mr.P.Muthukumar, learned State Government Pleader for respondents 2 to 4.

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3 COPY 2. Learned counsel for the petitioner submits that encroachment exists on the public highway.

3. It is submitted by learned counsel for the first respondent that the first respondent would inspect the land and if encroachment is found, necessary steps, in accordance with law, would be undertaken for the removal of the encroachment expeditiously.

4. In view of the said submission, the writ petition stands disposed of. There will be no order as to costs.

The above order, vide paragraph No.3 has recorded the submission of learned counsel for NHAI that 3rd respondent before us (1st respondent in that WP) would inspect the land and if encroachment is found, necessary steps, in accordance with law, would be undertaken for removal of the encroachment expeditiously. It is after the aforementioned order, impugned notice came to be issued.



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12. On a careful perusal of impugned notice, we find, as already alluded to supra, that it has been issued under Section 26(2) of said Act by 3rd respondent after setting out the details of what according to 3rd respondent is unauthorized occupation qua said land in paragraph Nos. 1 to 5. There is a direction in paragraph Nos. 6 and 7 directing removal of unauthorized occupation straightaway and it also says that the encroacher (writ petitioner before us), in the event of failure to comply with the notice shall render himself liable to penalty and summary eviction under subsection (6) of Section 26 of said Act. The impugned notice reads as follows:



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भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
(सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार)
National Highways Authority of India
(Ministry of Road Transport & Highways, Govt. of India)
कोयंबटूर कार्यालय / कोयंबटूर / Project Implementation Unit-Coimbatore
डी. नं. 11/1, कोयंबटूर नगर पूर्व, रामनाथपुरम, कोयंबटूर - 441 045
D.No.11/1, Kanga Nagar East, Ramnathapuram, Coimbatore - 441 045
फ़ोन: 020-2284034, 2284725 ई-मेल: naai@naai.org / naai@naai.gov.in वेब: www.nhai.gov.in



Notice No. NHAI/PIU CBE/ENCROACHMENT/NH-544(NH-47)/2024/ 1015.

NOTICE FOR REMOVAL OF UNAUTHORISED OCCUPATION
[Under sub-section (2) of section 26 of the control of National Highways
(Land and Traffic) Act 2002]

1. Whereas I, A. Senthil Kumar, DGM(T/E) Project Director, National Highways Authority of India, Coimbatore on periodical inspection of the highway land and on the information received by me, and on the basis of the records available in this office, am satisfied that, an unauthorized occupation by construction of Lathe Workshop with Asbestos sheet has taken place on the Project Highway, comprised area about 220 sqm. in S.F.No.285 situated at km.133/700 on RHS at Karumathampatti village of Old No.NH No.47 (New No. NH-544) (indicated location sufficient to identify area), owned by National Highway Authority of India and such unauthorized occupation has been caused by you / you are responsible for such unauthorized occupation.

2. Whereas, you (Shri. R.S. Palanisamy) have been issued with notices twice on 28.08.2018 and 26.04.2022 for removal of the said unauthorised occupation. You have made a representation that you are enjoying the said property building for the past 50 years, that you have been granted Patta by the Revenue Department during Jarnahandi in 1974 and that you have produced certain records to prove your title. Your claim of grant of Patta by the Revenue Authorities in 1974 along with the documents produced by you was sent to the Revenue Divisional Officer, Coimbatore South, Coimbatore for verification of the genuineness / correctness of the claims made by you regarding the issuance of Patta to you by the Revenue Department.

3. Whereas, in the meanwhile, one Shri. D. Prabakaran filed in W.P.No.31782 of 2023 before the Hon'ble High Court of Madras against the DGM and Project Director, Coimbatore, District Collector, Coimbatore, RDO, Coimbatore South, Coimbatore, Tahsildar, Sullur Taluk, Coimbatore and 6 others with a prayer for issue of Writ of Mandamus directing the Respondents 1 to 4 to remove the encroachments in Survey No.285 of Karumathampatti Village, Sullur Taluk, Coimbatore District by considering the representation dated 21.03.2017 of the Petitioner. The Hon'ble High Court vide order dated 07.11.2023 has directed the undersigned to inspect the



Head Office : G-5 & 6, Sector-10, Dwarka, New Delhi - 110 075. Phone : 011-2607 4100 / 4200. वेबसाइट : www.nhai.gov.in
Coimbatore Office : G-5 & 6, Sector-10, Dwarka, New Delhi - 110 075. Tel : 011-2607 4100 / 4200. Website : www.nhai.gov.in

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and if the encroachment is found, necessary steps, in accordance with law, would be taken for the removal of the encroachments expeditiously.

4. In the meantime, you have also approached Hon'ble High Court, Madras and filed in WP No.1823/2024 against the District Collector, Coimbatore and Tahsildar, Suler Taluk, Coimbatore District seeking issue of Patta and that the High Court, Madras vide order dated 29.02.2024 has issued directions to the Respondents to consider the representation dated 22.11.2023 after giving notice to you as well as rival claims / interested parties / objectors / aggrieved parties / adjacent owners if any, as case may be and after conducting an enquiry into the matter and pass appropriate orders on merits and in accordance with law within a period of three (3) months from the date of receipt of copy of this order.

5. Whereas, the Tahsildar, Suler vide his order dt.14.06.2024 received in this office on 06.07.2024 has rejected your request for grant of Patta on the ground that the land in question is a Government Poramboke and classified as "Salai" in the Revenue Records, that it is an alienable Poramboke, as per Revenue Records and that no Patta was granted to you as claimed by you in your Representation.

6. Whereas, from the above, it is clear that you are in unauthorized occupation of National Highways Poramboke and this office has already issued Notice twice on 28.08.2018 and 26.04.2022 to you as per law for removal of the said encroachments by construction of Lathe Workshop with Asbestos sheet.

7. Therefore, Shri. R.S. Palanisamy is hereby requested to take notice that he has to remove the unauthorized occupation by construction of Lathe Workshop with Asbestos sheet, within 14 days of the date of receipt of this notice and he is informed to be aware that any failure to comply with this notice shall render him liable to penalty and summary eviction from the above mentioned Highway land under Sub-Sec (6) of Section 26 of Central of National Highways (Land & Traffic) Act, 2002 at the cost and risk of the individual.

Issued under my hand and seal at Coimbatore on ¹⁵ day of July 2024.



To:
Place: Coimbatore
Date:

To:
Shri. R.S. Palanisamy
Nannamathampatti,
Coimbatore District.

(A. Senthil Kumar)
Project Director & Highways Administrator
PIU Coimbatore



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13. This takes us back to sub-section (3) of Section 26 of said Act.

Sub-section (3) of Section 26 of said Act comes into play when a notice under sub-section (2) is issued. This means that when impugned notice was issued under sub-section (3), sub-section (2) came into play. A careful reading of sub-section (3) makes it clear that 3rd respondent, while issuing the impugned notice, should have specified the place and time of hearing any representation, if any, which the encroacher (writ petitioner) may make within the time specified in the impugned notice. This means that the impugned notice should have set out the time frame for writ petitioner to send a representation, if so advised and if so desired and if there is any representation, place and time of hearing of representation should have been specified. We understand and read place as 'venue'.

14. In the case on hand, writ petitioner says that he has a representation to make and according to writ petitioner, he has a rock-solid response to make. We express no opinion on this submission as we would be relegating the matter to 3rd respondent for considering the representation.



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15. We find that the language in which sub-section (3) of Section 26 of said Act is couched makes it clear that it is statutorily imperative for 3rd respondent to specify the time frame, for the encroacher to make a representation (if any) i.e., if so advised and if so desired and if a representation is made, 3rd respondent should fix the place (venue) and time of hearing qua the representation. Therefore, the provision makes 'hearing' statutorily imperative. In this regard, we deem it appropriate to refer to the order dated 01.08.2019 in W.P. No. 22634 of 2019 (*State Bank of India Officers' Association V. The Assistant Commissioner ST*) wherein one of us (M. SUNDAR,J.) sitting as a Single Judge explained the difference between the expressions 'a reasonable opportunity to show cause' and 'a reasonable opportunity of being heard' occurring in proviso to sub-sections (1) & (2) of Section 27 of 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)' (hereinafter 'TNVAT Act' for the sake of brevity and convenience) and proviso to Section 22(4) of TNVAT Act respectively. In other words, proviso to sub-sections (1) & (2) of Section 27 of TNVAT Act talks about 'a reasonable opportunity to show cause' and proviso to Section 22(4) of TNVAT Act talks about 'a reasonable opportunity of being heard'.



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The most relevant paragraphs of the order are paragraph Nos. 17 and 18, which read as follows:

'17. The expression occurring in the proviso to Sub-Sections (1) and (2) of Section 27 of TNVAT Act is 'a reasonable opportunity to show cause' whereas expression occurring in the proviso to Section 22(4) is 'a reasonable opportunity of being heard.'

18. To be noted, both these expressions have been underlined in the extracts and reproduction of same supra for the sake of convenience, clarity and ease of reference. No elucidation or elaboration is required to say that these two expressions are clearly different and distinct. It is also to be noticed that these two expressions are deployed in the same statute. Most importantly, both these expressions have been deployed with regard to revised assessment proceedings. In the considered view of this Court, both Section 22(4) and Section 27(1) deal with assessment other than deemed assessment. While Section 22(4) deals with a situation where the dealer has not filed returns or if the returns filed are incomplete or incorrect, Section 27(1) visualizes two situations wherein one is escaped assessment and the other is where the dealer has been taxed at a rate lower than the rate at which a dealer ought to have been



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taxed. This situation is adumbrated and articulated in sub-sections (1) and (2) of [Section 27](#). Therefore, in the considered opinion and view of this Court, the legislature in its wisdom has consciously used two different expressions in the proviso to Sub-sections (1) and (2) of [Section 27](#) and Sub-section (4) of [Section 22](#), though both deal with a situation of assessment by the Assessing Officer which is other than deemed assessment. While [Section 22\(4\)](#) which is referred to in fiscal law parlance as 'best judgment' deals with situation where no return or incomplete returns filed, [Section 27\(1\)](#) and (2) deal with situation where returns have been filed. It may not be necessary to delve into those aspect of the matter any further as the plain reading and plain language in which these two expressions are couched is unambiguous and it is not even ambivalent.'

The above matter was carried in appeal by way of an intra court appeal by *State Bank of India Officers' Association* and the aforementioned order was confirmed by a Hon'ble Division Bench vide judgment dated 6.12.2019 in W.A. No. 4073 of 2019.

16. In the light of ***State Bank of India Officers' Association principle***, we are of the considered view that sub-section (3) of Section 26 of



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said Act makes it statutorily imperative to *inter alia* do three things:

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- (a) Give the encroacher a time frame and specify the same in the notice i.e, time frame for the encroacher to make a representation;
- (b) Specify the place (venue) and time of hearing qua representation, if representation is received within time frame and thereafter
- (c) If there is failure (subject of course to outcome of hearing qua representation) resort to sub-section (6) of Section 26 of said Act.

17. Learned counsel for R3 contended that Section 26(3) does not envisage making an order. We are unable to agree as sublime legal philosophy underlying sub-section (3) is NJP (Natural Justice Principle) and therefore the same will stand neutralized if there is a hearing but the noticee is not let known about outcome of the hearing which in turn will obviously vest the noticee with a right to assail the same in a manner known to law.

18. In the light of the narrative, discussion and dispositive



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reasoning supra, we make the following order:

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- (i) In this case, as there is no dispute about jurisdiction of 3rd respondent who issued the impugned notice, we are not interfering with paragraph Nos. 1 to 5 of the impugned notice;
- (ii) Paragraph Nos. 6 and 7 of the impugned notice are set aside;
- (iii) Writ petitioner shall now give a representation within a fortnight from today i.e., **by 08.08.2024**;
- (iv) On receipt of representation on or before 08.08.2024 from writ petitioner, 3rd respondent shall send a communication to writ petitioner under due acknowledgement specifying the place (venue), date and time of hearing in such a manner that this communication is served on the writ petitioner at least five days before the date of hearing;
- (v) Post hearing, 3rd respondent shall, depending upon representation and hearing, pass orders on the representation on merits and in accordance with law;
- (vi) In this regard, we make it clear that we have not expressed



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any view or opinion on the merits of the matter. Therefore, it is open to 3rd respondent to pass orders on merits which will include orders resorting to sub-section (6) of Section 26 of said Act or dropping the proceedings, as the case may be;

(vii) An order so made (as above) shall be served on writ petitioner under due acknowledgement within three working days from the date of the order.

19. Captioned WP is disposed of in the aforesaid manner with the aforesaid directives. Consequently, captioned WMP is closed. There shall be no order as to costs.

nv

(M.S.J.) (K.G.T.J.)
25.07.2024



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1. District Collector,
Collectorate Building,
Coimbatore – 641 018.
2. The Tahsildar,
Taluk Office, Sulur,
Coimbatore – 641 402.
3. The Project Director,
National Highways Authority of India,
D.No.11/1, Kongu Nagar East,
Ramanathapuram,
Coimbatore – 641 045.



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M. SUNDAR, J.

and

K. GOVINDARAJAN THILAKAVADI, J.

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25.07.2024