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W.P.No.35414 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2024

Coram

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

and

THE HONOURABLE MR.JUSTICE **K.RAJASEKAR**

W.P.No.35414 of 2024

&

W.M.P No.38299 of 2024

in

W.P.No.35414 of 2024

Mr.S.Muniyamuthu

S/o.Selvarasu

.. Petitioner

VS

1. The District Collector

Cuddalore District

Cuddalore

2. The District Revenue Officer

Cuddalore District

3. The Revenue Divisional Officer

Sub Division

Viruthasalam, Cuddalore District



W.P.No.35414 of 2024

4. The Tahsildar
Veppur Taluk
Cuddalore District

5. The Block Development officer
Nallur Union Office
Nallur
Veppur Taluk
Cuddalore District – 606 302

6. The Inspector of Police
Veppur Police Station
Veppur Taluk
Cuddalore Taluk

7. The President
Nallur Panchayat
Veppur Taluk
Cuddalore District

8. Mr.K.Ayyamperumal
S/o.Kolanginathan

9. Mr.K.Katturaja
S/o.Kolanginathan

10. The Divisional Engineer
State Highways Department,
Cuddalore Division, Cuddalore District

.. Respondents



W.P.No.35414 of 2024

(R10 suo motu impleaded vide this order)

WEB COPY

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus to direct 4th respondent to remove the illegal encroachment from the Government land in Survey No.73 situated at Nallur Village, Veppur Taluk, Cuddalore District to enable the petitioner and the public to use the road for agriculture purpose and pass order based on the petitioner representation dated 08.11.2023.

For Petitioner : Mr.T.Velu

For Respondents : Mr.T.K.Saravanan
Government Advocate
for R1 to R7 and R10

ORDER

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

Captioned writ petition has been filed alleging encroachment in 'S.No.73 in Nallur Village, Veppur Taluk, Cuddalore District' [hereinafter 'said land' for the sake of convenience]. To be noted, R8 and R9 (private respondents) are alleged encroachers.

2. When the matter was listed before another Hon'ble Division Bench on



W.P.No.35414 of 2024

06.12.2024, the following proceedings were made:

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Sl. No.	Particulars	Remarks
1	Mr. T. K. Saravanan, learned Government Advocate submits that he accepts notice for R5 to R7 also.	
2	Mr. T. Velu, learned counsel for writ petitioner is before us.	
3	Learned State counsel submits, on instructions, that there is encroachment qua said land and that action is warranted under the 'Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)' {hereinafter 'State Highways Act' for the sake of brevity}. This means that the alleged encroachers have to be show-caused <i>inter alia</i> under Section 28(1)(ii) of State Highways Act and if any representation is received within the show-cause period of 7 days, Authority or Officer concerned should pass final orders.	

3. Today, Mr.T.Velu, learned counsel for writ petitioner is before us.

Mr.T.K.Saravanan, learned Government Advocate submits that he accepts notice for R5 to R7 also.

4. Learned State counsel submits, on instructions, that there is encroachment qua said land and that action is warranted under the 'Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)' {hereinafter 'State Highways Act' for the sake of brevity}. This means that the alleged encroachers have to be show-caused *inter alia* under Section 28(1)(ii) of State Highways Act and if any representation is received within the show-cause period of 7 days, Authority or Officer concerned should pass final orders.



W.P.No.35414 of 2024

5. As there is adequate safety valve for private respondents, with the consent of both sides, main writ petition was taken up making it clear that all the rights and contentions of private respondents are preserved when they are show-caused.

6. The power to show-cause is vested in Highways Authority. The term 'Highways Authority' has been defined vide Section 2(13) of State Highways Act, Section 2(13) of State Highways Act takes us to Section 5(2) and as per Section 5(2) of State Highways Act, it is jurisdictional Divisional Engineer. In this case it is Divisional Engineer, State Highways Department, Cuddalore Division, Cuddalore District. Therefore, we implead Divisional Engineer, State Highways Department, Cuddalore Division, Cuddalore District as R10 and Mr.T.K.Saravanan, learned Government Advocate accepts notice for R10 also.

7. Let the alleged encroachers be it R8 or R9 or any other encroachers be show-caused under Section 28(2)(ii) of State Highways Act and let the proceedings be carried to its logical end on its own merits and in accordance with law. When we say logical end, we make it clear that R8, R9 and/or any



W.P.No.35414 of 2024

other alleged encroachers would be show-caused under Section 28(2)(ii) of State Highways Act. If any representation is received within the show-cause period of 7 days, the Authority or Officer concerned, shall pass final orders. If the final order is in favour of noticees, that would be the end of the matter and if that not be so, further proceedings will continue and rights of R8 and R9 to assail such final order is also preserved. For this purpose, all the rights and contentions of R8 or R9 or any other person, who may be show-caused, are preserved. This is the safety valve we put in and therefore there is no impediment in captioned writ petition being disposed of in the Admission Board, when R8 and R9 are not before us.

Captioned writ petition disposed of in the aforesaid manner (recording the stated position of the learned State counsel). Consequently, writ miscellaneous petition is disposed of as closed. There shall be no order as to costs.

[M.S., J]

[K.R.S., J]

09.12.2024

Index: Yes/No

Speaking order / Non-speaking order



W.P.No.35414 of 2024

WEB COPY

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W.P.No.35414 of 2024

Nallur Panchayat
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and
K.RAJASEKAR, J.,

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W.P.No.35414 of 2024

09.12.2024



WEB COPY



W.P.No.35414 of 2024