



WP.No.32814 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **K.RAJASEKAR**

W.P.No.32814 of 2024
and
W.M.P. No.35642 of 2024 in W.P. No.32814 of 2024

D.Palanivel

... Petitioner

VS

- 1.The Assistant Engineer,
Highways Department,
Cuddalore Road,
Panruti, Cuddalore District.
- 2.The Divisional Engineer,
Construction and Maintenance,
Highways Department,
Cuddalore Road, Vridhachalam,
Cuddalore District.
- 3.The Tahsildar,
Panruti Taluk,
Cuddalore District.
- 4.The President,
Perperiyankuppam Village Panchayat,
Panruti Taluk,
Cuddalore District.

... Respondents



WP.No.32814 of 2024

WEB COPY

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus forbearing the respondents from proceeding with any action pursuant to the notice of the 1st respondent dated 18.09.2024 until the joint survey and measurements are conducted and properties and road portion are demarcated in front of petitioner house situated at Survey No.336/5, Periperiyankuppam Village, Muthandikuppam to Perperiyankuppam Road viz., Panikkankuppam Road near the Emarasappan Temple, Panruti Taluk, Cuddalore District by considering the representation of the petitioner dated 25.09.2024 in accordance with law on merits expeditiously within a time frame fixed by this Court.

For Petitioner : Mr.R.Prabakar

For Respondents : Mr.V.Ravi,
Special Government Pleader

ORDER

[Order of the Court was made by **K.RAJASEKAR, J.,**]

This writ petition has been filed for issuance of Writ of Mandamus forbearing the respondents from proceeding with any



WP.No.32814 of 2024

action pursuant to the notice of the 1st respondent dated 18.09.2024 until the joint survey and measurements are conducted and properties and road portion are demarcated in front of petitioner house situated at Survey No.336/5, Periperiyankuppam Village, Muthandikuppam to Perperiyankuppam Road viz., Panikkankuppam Road near the Emarasappan Temple, Panruti Taluk, Cuddalore District by considering the representation of the petitioner dated 25.09.2024 in accordance with law and on merits.

2. Mr.R.Prabakar, learned counsel for the petitioner submits that the petitioner is residing at Survey No.336/5, Perperiyankuppam Village for several years and on 18.09.2024, the first respondent issued notice to the petitioner and five others stating that they are in encroachment of the road belonging to the Highways Department near Emarasappan temple on the Muthandikuppam to Perperiyankuppam Road via Panikkankuppam Road, which is under the control of second respondent. This notice was issued by invoking 'The Tamil Nadu Highways Act, 2001' (hereinafter 'said Act' for the sake of convenience and clarity). Learned counsel for the petitioner further submitted that the notice was bereft of any vital particulars such as the area earmarked and intended to be removed and the



WP.No.32814 of 2024

exact measurements of the survey field. The petitioner also submitted his objections dated 25.09.2024 to the notice.

3. Issue notice to respondents. Mr.V.Ravi, learned Special Government Pleader accepts notice for respondents.

4. We have gone through the notice dated 18.09.2024 wherein the first respondent has stated that there are encroachments on Muthandikuppam to Perperiyankuppam Road and he made a request to the petitioner to remove encroachment in the places owned by the Highways Department. Section 28 of the Tamil Nadu Highways Act, 2001 (hereafter Act) deals with the power of the Highway Authority in prevention of encroachment in highways and its boundaries. It reads as follows:

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.'



WEB COPY



WP.No.32814 of 2024

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

(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.'

5. Section 28(2)(ii) and its proviso of the Act, mandates issuance of notice to the alleged encroacher before removal of encroachment. it is also admitted by both sides that, the writ petitioner already submitted his objections to the notice dated 25.09.2024. We are of the view that this notice shall be treated as a



WP.No.32814 of 2024

notice issued under Section 28(2) of said Act and representation dated 25.09.2024 shall be considered by the Respondent No.2 and final order shall be passed. We deem it appropriate to write that we have not expressed any view or opinion on the merits of the matter qua alleged encroachment. The Respondent No.2, shall complete the aforementioned statutory exercise as expeditiously as his business would permit but in any event within six weeks from the date of receipt of copy of this order.

6. Accordingly, this writ petition is dismissed. There shall be no order as to cost.

(M.S.,J.) (K.R.S.,J.)
07.11.2024

Index : Yes / No
Neutral Citation : Yes / No
mmi/ stn



WP.No.32814 of 2024

WEB COPY

To

- 1.The Assistant Engineer,
Highways Department,
Cuddalore Road,
Panruti, Cuddalore District.
- 2.The Divisional Engineer,
Construction and Maintenance,
Highways Department,
Cuddalore Road, Vridhachalam,
Cuddalore District.
- 3.The Tahsildar,
Panruti Taluk,
Cuddalore District.
- 4.The President,
Perperiyankuppam Village Panchayat,
Panruti Taluk,
Cuddalore District.



WEB COPY



WP.No.32814 of 2024

**M.SUNDAR, J.,
and
K.RAJASEKAR, J.,**

mmi/ stn

W.P.No.32814 of 2024

07.11.2024

Page Nos.8/8