



W.P.No.33792 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.33792 of 2024

and

W.M.P.No.36600 of 2024

in

W.P.No.33792 of 2024

D.Saravanan
S/o.Devarayan

... Petitioner

Vs.

1. The District Collector
Thiruvannamalai
Thiruvannamalai District.
2. The Sub-Collector
Office of the Revenue Divisional officer
Cheyyar Taluk
Thiruvannamalai District.
3. The Divisional Engineer
Highways Department
Cheyyar Taluk
Thiruvannamalai District.
4. The Assistant Divisional Engineer
Highways Department

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Sub-Divisional Office
Cheyyar Taluk
Thiruvannamalai District.

5. The Executive Engineer
Highways Department
Cheyyar Taluk
Thiruvannamalai District.
6. The Tahsildar
Cheyyar Taluk
Thiruvannamalai District.
7. The Head Surveyor
Office of the Tahsildar
Cheyyar Taluk
Thiruvannamalai District.

... Respondents

Prayer :

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus to forbear the respondents from demolishing or removing the petitioner's property comprised in Circar Punjai Survey No.442/3B (Old) New Survey No.1/14B1, T.S.No.1/13C situate at Kodanagar Village, Thiruvathipuram Municipality, Cheyyar Taluk and Town, Thiruvannamalai District bearing Door No.115, Arcot Road, Cheyyar, Thiruvannamalai District consisting of Ground Floor and First Floor in pursuance of the notice No.246/2024-2025/E.Va.A dated 13.09.2024.

For Petitioner	:	Mr.S.Vijayanand
For Respondents	:	Mr.T.K.Saravanan Government Advocate



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ORDER

[Order of the Court was made by **M.SUNDAR, J.,**]

Captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity} has been filed with a mandamus prayer qua writ petitioner's property situate in 'Survey No.442/3B (Old) New Survey No.1/14B1, T.S.No.1/13C at Kodanagar Village, Thiruvathipuram Municipality, Cheyyar Taluk and Town, Thiruvannamalai District' {hereinafter 'said property' for the sake of brevity}.

2. The mandamus is to forbear the respondents from demolishing or removing immovable structure qua said property.

3. Mr.S.Vijayanand, learned counsel on record for writ petitioner submits that said property was purchased and the writ petitioner has applied for name transfer of patta.

4. Issue notice to respondents.

5. Mr.T.K.Saravanan, learned Government Advocate accepts notice for all seven respondents.



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6. Mr.T.K.Saravanan, learned State Counsel submits that even according to writ petitioner's typed set, a 'Show Cause Notice' {'SCN'} has already been issued. This SCN is dated 13.09.2024 bearing reference No.246/2024-2025/E.Va.A. To be noted, this 'SCN dated 13.09.2024' shall hereinafter be referred to as 'said notice' for the sake of convenience and clarity. Learned State Counsel pointed out that the said notice is under Section 28(2)(ii) of 'the Tamil Nadu Highways Act, 2001' {hereinafter 'said Act' for the sake of brevity}. It was also pointed out that writ petitioner in response to said notice has sent a representation dated 20.09.2024.

7. Owing to the limited scope of the captioned WP, main WP was taken up in the Admission Board with the consent of both sides.

8. The short point is, notice under Section 28(2)(ii) of said Act has already been issued and the noticee / writ petitioner has also sent a representation in response to said notice. This means that representation has to be considered before passing final orders. In this case, we find that the notice has been issued by a person authorized on his behalf and an order considering the representation should be made either by the authority or by the officer concerned. The provision of law namely, Section 28(2)(ii) of said



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Act also provides for 7 days SCN which has also been done.

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9. Reverting to the case on hand, we find that Section 28(2)(ii) of said

Act together with proviso reads as follows:

'28. Prevention of encroachment.-

(1)

(2)

(i)

(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.'

{underlining made by this Court for ease of reference}

10. The term 'Highways Authority' has been defined under Sub-Section (13) of Section 2 of said Act and the same reads as follows:

'2. In this Act, unless the context otherwise requires:-

(1)

(2)

(3)

(4)



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(5)

(6)

(7)

(8)

(9)

(10)

(11)

(12)

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

11. Section 2(13) of said Act takes us to Section 5(2) of said Act and 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.'

12. To be noted, 'Government' has also been defined in Section 2(11) of said Act and the same reads as follows:

'2. In this Act, unless the context otherwise requires:-

(1)

(2)

(3)

(4)



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- (5)
(6)
(7)
(8)
(9)
(10)
(11) *'Government' means the State Government.'*

13. In the case on hand, said notice has been issued by the Assistant Divisional Engineer of the Highways Department.

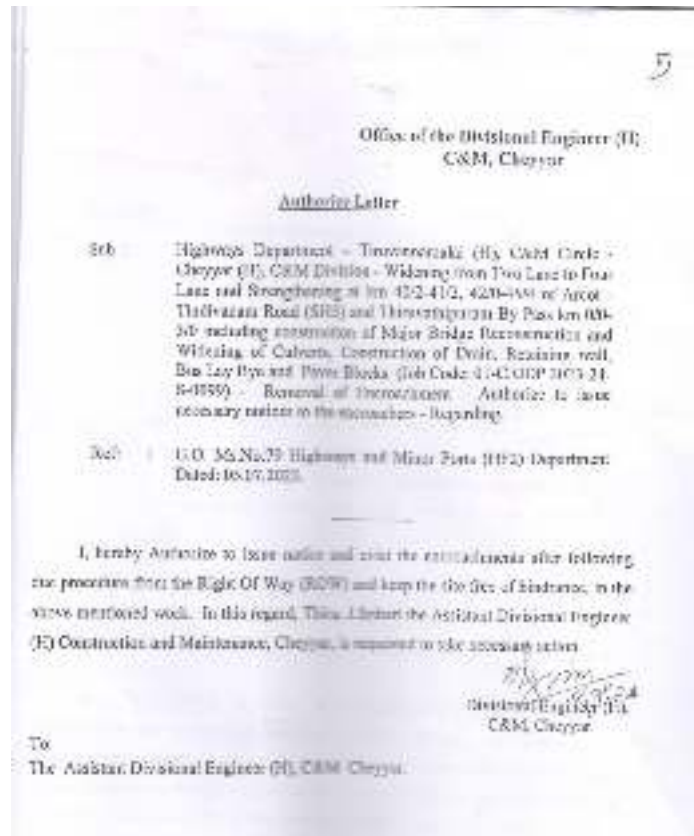
14. Learned State Counsel has placed before us an authorization signed on 08.07.2024 and a scanned reproduction of the same is as follows:



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15. Therefore, said notice has been issued by a person authorised by the Highways Authority as this authorisation has been given by the jurisdictional Divisional Engineer.

16. 7 days SCN has also been issued and within 7 days, the writ petitioner has also sent a representation.



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17. Learned State Counsel very fairly submitted that as the representation has been received within the time limit, the same will be considered by the Highways Authority or by the officer concerned before passing final orders and further action will be subject to depending upon such final orders.

18. We are of the considered view that this submission douses the anxiety of the writ petitioner. The writ petitioner not having challenged said notice may really not be entitled to any relief but owing to the fair stand taken by the learned State Counsel, we deem it appropriate to dispose (without dismissing) of the captioned WP recording the stated position of learned State Counsel.

19. Let final orders after considering the representation dated 20.09.2024 be made either by the Highways Authority or by the officer concerned and further action, if any and if that be so, will be subject to such orders that are made.



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WEB COPY Captioned WP disposed of in the aforesaid manner. Consequently, captioned Writ Miscellaneous Petition disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (K.R.S.,J.)
25.11.2024

Index : Yes / No
Neutral Citation : Yes / No
Speaking order / Non-speaking order

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To

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