



WP.No.33839 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.33839 of 2024
and
W.M.P.No.36660 of 2024
in
W.P.No.33839 of 2024

1. P.Rajendran
S/o.Palani
2. S.Bharani Vijayan
S/o.Shanmugam
3. E.Murugan
S/o.Elumalai
4. E.Payunukumar
S/o.Elumalai
5. S.Raman
S/o.Mannan
6. M.Munniyappan
S/o.Mannangakatti
7. M.Mani
S/o.Mopathu

... Petitioners

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Vs.

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1. The State of Tamil Nadu
Rep. by its Secretary to Government
Highways Department
Secretariat, Chennai-600 009.
2. The District Collector
Tiruvannamalai District
Tiruvannamalai.
3. The Revenue Divisional officer
Tiruvannamalai District
Tamil Nadu.
4. The Tahsildar
Tiruvannamalai Taluk
Tiruvannamalai District
Tamil Nadu.
5. The Divisional Engineer
Tiruvannamalai Division,
Highways Department
Tiruvannamalai District.
Tamil Nadu.

... Respondents

Prayer :

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the 1st and 5th respondents not to remove the petitioners' house with regard to their notice dated 24.09.2024 and further directing the respondents from 2 to 4 to consider the representation dated 27.09.2024 and subsequently, direct them to grant of patta to the petitioners by considering the Anubandham Patta dated



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05.10.1996 issued by the Government of Tamil Nadu and to fix responsibilities on the authorities who acted in violation of law and procedure to take action against them and to quantify the compensation liable to be paid for each petitioner for the loss caused by the authorities.

For Petitioners : Mr.J.Jaya Bharath
For Respondents : Mr.T.K.Saravanan
Government Advocate

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. The mandamus prayer is in two parts, one is to forbear the respondents from removing petitioners' house and another is for grant of patta.

2. Learned counsel for writ petitioners submitted that a Anubantham patta was granted on 05.10.1966.

3. Issue notice to respondents.

4. Mr.T.K.Saravanan, learned Government Advocate accepts notice for all five respondents.



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5. Mr.J.Jaya Bharath, learned counsel on record for writ petitioners submits that a notice dated 24.09.2024 under Section 28(2)(ii) of 'the Tamil Nadu Highways Act, 2001' {hereinafter 'said Act' for the sake of brevity} has already been issued.

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

7. 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}



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8. The term 'Highways Authority' has been defined under Sub-Section

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

(1)

(2)

(3)

(4)

(5)

(6)

(7)

(8)

(9)

(10)

(11)

(12)

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

9. 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



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the Government in-charge of each division, shall be the Highways authority for that division.'

10. 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)

(5)

(6)

(7)

(8)

(9)

(10)

(11) 'Government' means the State Government.'

11. Learned State Counsel confirms that Assistant Divisional Engineer has been authorised by the Divisional Engineer to issue notice and this submission is recorded. Now that SCN under said Act giving 7 days time to respond has been issued, it is for the writ petitioners to respond. It is not



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clear as to whether the said notice was served on the writ petitioners as the noticees are shown as 'ஆக்கிரமிப்பாளர்கள்' and learned counsel for writ petitioners submits that the writ petitioners got a copy from other noticees, who were visited with notice but learned State Counsel submits to the contrary.

12. Without going into this controversy, we make it clear that said notice dated 24.09.2024 shall be responded to within 7 days from today i.e., on or before 02.12.2024 and the same will be considered by the Highways Authority or by the officer concerned and final orders shall be passed. Further action as regards removal shall obviously be subject to and depending on final orders of the officer concerned or by the Highways Authority.

13. In this view of the matter, we do not find any ground to accede to two parts mandamus prayer made by the writ petitioners. We are of the view that it will suffice to record the stated position of learned State Counsel that procedures adumbrated in Section 28(2)(ii) of said Act will be followed.



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Recording the submission, captioned WP is disposed of as closed.
Consequently, captioned Writ Miscellaneous Petition thereat is closed.
There shall be no order as to costs.

(M.S.,J.)

(K.R.S.,J.)

25.11.2024

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Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

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To

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Rep. by its Secretary to Government
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M.SUNDAR, J.,

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K.RAJASEKAR, J.,

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