



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17.12.2024

CORAM:

THE HON'BLE MR. JUSTICE M. SUNDAR
AND
THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. No.33500 of 2024 & W.M.P. No.36273 of 2024

G.E. Gnanadas

Petitioner

vs.

1. The Assistant Divisional Engineer (H) (C & M)
Tambaram Sub Division
Tambaram
Chennai 600 045
2. The Tahsildar
Tambaram
Chennai 600 045

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records pertaining to encroachment notice dated 23.09.2024 issued by the first respondent and quash the same as arbitrary, illegal and violative of principles of natural justice and direct the respondents to conduct a fresh and proper inspection, with due notice to the petitioner and verify all relevant documents pertaining to the petitioner's property before proceeding with any further action.

For petitioner

Mr. S. Sagaya Jayaseelan
for Mr. D. Edwin Yovan Raj

For respondents

Mr. V. Ravi
Special Government Pleader

- - - - -

**ORDER**

(made by M. SUNDAR, J.)

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Captioned 'writ petition' ('WP' for the sake of brevity) has been filed with a certiorarified mandamus prayer. The certiorari limb of the prayer assails a notice signed by R1 [Assistant Divisional Engineer (H) (C & M)] on 23.09.2024. To be noted, this notice shall be referred to as 'impugned notice' for the sake of convenience and clarity. The mandamus limb of the prayer seeks a fresh inspection as regards 'property comprised in Survey No.60/6 in Gowrivakkam Village, Tambaram Taluk, Chengalpattu District' ('said land' for the sake of convenience). To be noted, said land is the subject matter of impugned notice.

2. Mr. S. Sagaya Jayaseelan, learned counsel representing Mr.D.Edwin Yovan Raj, counsel on record for writ petitioner, submits that the impugned notice captioned 'NOTICE' says that it has been issued under Section 28(2)(ii) of 'Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)' ('TN Highways Act' for the sake of brevity) but the writ petitioner has not been show caused.

3. Issue notice.



4. Mr. V. Ravi, learned Special Government Pleader, accepted notice for both respondents.

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5. Mr. V. Ravi, learned State counsel submits, on instructions, that impugned notice was issued pursuant to an order dated 21.12.2023 made by another Hon'ble Division Bench in W.P. No.34753 of 2019. This order dated 21.12.2023 reads as under:

'None appears for the petitioner.

2. The petitioner alleges encroachment by respondent No.13. Representation given by the petitioner to the authorities has not evoked any response.

3. Mrs.R.Anitha, learned Special Government Pleader, appearing for respondents 1 to 5, submits that the Government authorities and Sembakkam Municipality would conduct a joint inspection, preferably within six months and depending upon the inspection report, further steps would be undertaken in accordance with law.

4. In view of the said statement, the writ petition stands disposed of. There shall be no order as to costs.'

6. We carefully considered the submission of learned State counsel. We find that the legal perimeter within which the captioned main WP perambulates is very limited and therefore, with the consent of learned counsel on both sides, main WP was taken up in the Admission Board itself.

7. A scanned reproduction of the impugned notice, as placed before us, is as follows:

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W.P. No.33500 of 2



HIGHWAYS DEPARTMENT

NOTICE

(Under Section 28(2)(ii) of Tamil Nadu Highways Act 2001)

Name of Road : Marmalong Bridge - Irumbuliyur - Vandalur -
Mudichur - Oragadam - Walajabad Road, (SH 48)
Km.11/6-21/2

Survey No : 60/6

Village Name : Gowriyakkam

Taluk Name : Tambaram

District Name : Chengalpattu

Name of Encroacher : Thiru.Gnanadass

Extent of Encroachment : 249 Sq.mtr.

Nature/ Type of Encroachment : RCC Building / Commercial Shopping Complex

The Encroachment in the Highways Land of above mentioned details should be vacated within a period of 15 Days, on receipt of this notice.

Failing to vacate the encroachment, the same shall be removed under Section 28(ii) of Tamil Nadu Highways Act 2001.

Also the cost of removal and cost of protection work shall be recovered as per section 29(1) of the same act.

Encl : Tahsildar Report.


Assistant Divisional Engineer (H)(C&M),
Tambaram Sub Division,
Tambaram, Chennai-45.

Note : This notice is issued based on the judgement of the Hon'ble High Court of Madras Vide W.P.No.34753/2019 and as per the report received from the Tahsildar Tambaram, Vide Letter Dated : 18.8.2024/A2/Dated : 14.09.2024.

8. Section 28(2)(ii) of TN Highways Act envisages the noticee being show caused vide a 'show cause notice' ('SCN' for the sake of



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brevity) returnable in 7 days. Section 28(2)(ii) together with the proviso thereat reads as follows:

'28. Prevention of encroachment:

(1)

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

(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.'

9. The expression 'Highways authority' has been defined *vide*

Section 2(13) of TN Highways Act and it reads as follows:

'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'



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Section 2(13) takes us to sub-section (2) of Section 5 which reads as follows:

'5. Appointment of Highways authorities:

(1)

(2) The Divisional Engineer, Highways Department of the Government incharge of each division, shall be the Highways authority for that division.'

10. A careful perusal of sub-section (2) of Section 28 makes it clear that a notice can be issued either by the Highways authority or by any person authorised by Highways authority in this behalf. Learned State counsel submits that R1 [Assistant Divisional Engineer (H) (C & M)] has been authorised by Highways authority. This submission is recorded.

11. Be that as it may, in the light of the language in which Section 28(2)(ii) and the proviso thereat is couched, we deem it appropriate to write that the impugned notice shall now be treated as SCN returnable in 7 days from today, *i.e.* returnable by 24.12.2024. It is open to the writ petitioner to make a representation (if so advised and if so desired) in response to the impugned notice which is now being treated as SCN. If the writ petitioner sends a representation in response to the impugned notice, the authority or officer concerned shall pass final orders on the same. Further action (if any) will obviously be subject to and depending on said final orders.

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12. The narrative, discussion and dispositive reasoning thus far necessarily means that the certiorari limb of the prayer is not acceded to but the impugned notice is directed to be treated as a SCN as the impugned notice directly calls upon the noticee to vacate. As regards mandamus limb, we leave it open as that will depend on the representation (if the writ petitioner sends one) and the final orders which the authority or officer concerned shall make.

13. As Section 28(2)(ii) will now stand complied with *vide* this order, we deem it appropriate to dispose of the captioned writ petition in the aforesaid manner.

14. *Ergo*, the sequitur is captioned main WP is disposed of as closed in the aforesaid manner. Consequently, captioned W.M.P. thereat is also disposed of as closed. There shall be no order as to costs.

(M.S., J.) (K.R.S., J.)
17.12.2024

Index : Yes/No
NC : Yes/No
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W.P. No.33500 of 2



M. SUNDAR, J.

and

K. RAJASEKAR, J.

cad

To:

1. The Assistant Divisional Engineer (H) (C & M)
Tambaram Sub Division
Tambaram
Chennai 600 045
2. The Tahsildar
Tambaram
Chennai 600 045

W.P. No.33500 of 2024

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