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WP.No.35007 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

CORAM

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

and

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

W.P.No.35007 of 2024

and

W.M.P. No.37959 of 2024 in W.P. No.35007 of 2024

1.C.Arul
2.C.Muthuvel

... Petitioners

VS

1.The District Collector,
Singaravelar Maligai,
Chennai – 1.

2.The State rep. By
Divisional Engineer (H),
O/o. The Divisional Engineer (H),
CMDP Division I, Alandur,
Chennai – 16.

3.Assistant Divisional Engineer,
CMDP Division – II,
Chennai – 16.

4.The Tahsildhar (Land Acquisition),
Highways Department,
NABARD Buildings, HSR Campus,
Guindy, Chennai – 25.

... Respondents



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Writ Petition filed under Article 226 of The Constitution of India

praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the third respondent made in letter No.128/2024/UKOPO/II dated 28.10.2024 and quash the same and consequently to forbear the respondents from any way interfering with the peaceful possession and enjoyment of the property situated in Old Survey No.85 and new Survey No.124/1, ECR Road, Neelankarai Village, Sholinganallur Taluk, Chennai – 41 and quash both.

For Petitioners : Ms.G.Selvi George

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

ORDER

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

Captioned 'Writ Petition' (hereinafter 'WP' for the sake of brevity) pertains to proceedings under the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002).



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2. Read this in conjunction with and in continuation of earlier proceedings made in our listings on 26.11.2024 and 04.12.2024 which read as follows:

PROCEEDINGS DATED 26.11.2024

'W.P.No.35007 of 2024

and W.M.P.No.37959 of 2024

in W.P.No.35007 of 2024

M.SUNDAR, J.,

and

K.RAJASEKAR, J.,

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

Captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity} pertains to alleged encroachment in land said to be vested in the Tamil Nadu Highways Department. A 'communication dated 28.10.2024 bearing letter No.128/2024/உ.சேபா.பொ-II from R3 [Assistant Divisional Engineer, Chennai]' {hereinafter 'impugned communication' for the sake of brevity} has been assailed.

2. Ms.G.Selvi George, learned counsel on record for writ petitioners submits that an opportunity has not been given to writ petitioners.



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3. *Issue notice to respondents.*

4. *Mr.T.K.Saravanan, learned Government Advocate accepts notice for all four respondents and learned State Counsel submits that writ petitioners have responded to the impugned communication, final orders have been passed and eviction notice has been issued only thereafter. Learned State Counsel submits that eviction exercise has also been carried out. In response to this, learned counsel for writ petitioners submits that a part of property has been demolished.*

5. *Learned State Counsel requests for a short accommodation to produce records i.e., writ petitioners' reply, orders etc., adverted to supra.*

6. *Let learned State Counsel produce records day-after-tomorrow.*

7. *In the interregnum, status quo as of today shall be maintained.*

List in the Admission Board i.e., Motion List on 28.11.2024.'



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PROCEEDINGS DATED 04.12.2024:

'W.P.No.35007 of 2024
and
W.M.P.No.37959 of 2024
in
W.P.No.35007 of 2024

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

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

Read this in conjunction with and in continuation of proceedings of this Court dated 26.11.2024 which reads as follows:

'W.P.No.35007 of 2024
and W.M.P.No.37959 of 2024
in W.P.No.35007 of 2024

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

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

Captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity} pertains to alleged encroachment in land said to be vested in the Tamil Nadu Highways Department. A 'communication dated 28.10.2024



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bearing letter No.128/2024/உ.சோ.பொ-II from R3 [Assistant Divisional Engineer, Chennai]' {hereinafter 'impugned communication' for the sake of brevity} has been assailed.

2. Ms.G.Selvi George, learned counsel on record for writ petitioners submits that an opportunity has not been given to writ petitioners.

3. Issue notice to respondents.

4. Mr.T.K.Saravanan, learned Government Advocate accepts notice for all four respondents and learned State Counsel submits that writ petitioners have responded to the impugned communication, final orders have been passed and eviction notice has been issued only thereafter. Learned State Counsel submits that eviction exercise has also been carried out. In response to this, learned counsel for writ petitioners submits that a part of property has been demolished.

5. Learned State Counsel requests for a short accommodation to produce records i.e., writ petitioners' reply, orders etc., adverted to supra.

6. Let learned State Counsel produce records day-after-tomorrow.

7. In the interregnum, status quo as of today shall be maintained.

List in the Admission Board i.e., Motion List on 28.11.2024.'

2. Thereafter, there was one listing on 03.12.2024 and following proceedings were made:

'W.P.No.35007 of 2024
and W.M.P.No.37959 of 2024
in W.P.No.35007 of 2024

M.SUNDAR, J.,



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WP.No.35007 of 2024

and
K.RAJASEKAR, J.,

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

There is no representation for writ petitioners either in the physical Court or on 'Videoconferencing' {'VC'} platform. To be noted, this is a hybrid hearing, which is a daily / regular / routine feature in this Court.

2. List tomorrow i.e., on 04.12.2024.

[M.S., JJ]

[K.R.S., JJ]

03.12.2024

mk

P.S.

At the end of the list, Ms.G.Selvi George, learned counsel on record for writ petitioners is before this Court after proceedings were made and learned counsel expresses regret for missing the matter when it was called. Presence of Ms.G.Selvi George is noted.'

3. Interestingly and intriguingly, along with an order pursuant to writ petitioners' response to being show caused under Section 28(2)(ii) of 'Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)' [hereinafter 'said Act' for the sake of convenience, another 'show cause notice' ('SCN' for the sake of brevity) dated 28.10.2024 under Section 28(2)(ii) of said Act has been issued and that is the grundnorm on which the captioned WP is predicated.

4. Learned counsel for writ petitioner submits



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that 03.05.2024 response of writ petitioners is the response to 28.10.2024 SCN. We will consider this as the matter progresses.

5. Nonetheless considering the trajectory the matter has taken, we deem it appropriate to write that the Divisional Engineer (H), CMDP Division - I, Alandur, Chennai-16, who has issued 28.10.2024 SCN, shall remain present in Court in the next listing.

List in the Admission Board i.e., Motion List tomorrow. List on 05.12.2024.'

3. The aforementioned proceedings shall now be read as an integral part and parcel of the instant order. This means that the short forms and abbreviations used in the earlier proceedings will continue to be used in the instant order also.

4. Facts are fairly simple. R3 (Assistant Divisional Engineer, CMDP Division II, Chennai - 16) issued a notice dated 05.04.2024 under Section 28(2)(ii) of said Act. Section 28(2)(ii) is in the nature of a Show Cause Notice (SCN) i.e., SCN returnable in seven days cause to be shown by/on behalf of writ petitioner by way of a reply dated 03.05.2024 and proviso to Section 28(2)(ii) makes it clear that



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when a representation is sent within seven days time limit, the same shall be considered by the authority or officer concerned before passing final orders. Pursuant to the proviso, R3 has passed final orders dated 28.10.2024 bearing reference கடித எண்.128/2024உ.கோ.பொ-II however along with this order, R2 has sent a notice captioned 'Eviction Notice' and has stated that the same is under Section 28(2)(ii) of said Act. This is the reason why 04.12.2024 proceedings were made yesterday. Pursuant to proceedings made yesterday (04.12.2024), today, Mr.P.M.Rajaganapathi, Divisional Engineer (H), CMDP, Division - 1, Chennai - 16 (R2) is present in Court.

5. On instructions, Mr.V.Ravi, learned Special Government Pleader submits that it is only a final order putting on notice the noticees the date fixed for removal of encroachment and the provision of law has been inadvertently mentioned. Therefore, there is no second show cause notice. We accept this submission and treat this 28.10.2024 notice as a communication intimating the date for removal of encroachment and as not a SCN much less a SCN under Section 28(2)(ii) of said Act.



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6. This takes us to the other facet of WP. Ms.Selvi George, learned counsel on record for writ petitioners points out that there are two survey numbers viz., Survey Nos.85 and 86 in 115, Neelangarai Village, Saidapet Taluk (now Sholinganallur Taluk), Chengalpet District (now Chennai District). Learned counsel for writ petitioners points out that the residence of the writ petitioners and their families are situate in Survey No.85. To this, on instructions from R2, learned Special Government Pleader very fairly pointed out that even in the 28.10.2024 notice which has been now treated as final notice, it has been made clear that the present exercise pertains only to Survey No.86. It is also pointed out that old Survey No.85 is now New Survey No.124/1 and as regards the present exercise under said Act is concerned, the same does not concern or pertain to writ petitioners' construction in Old Survey No.85 New Survey No.124/1. This submission made on instructions from R2 is recorded. Therefore, the present exercise is only with regard to old Revenue Survey No.86.

7. The narrative thus far makes it clear that the procedure under the Statute i.e., said Act viz., show causing the petitioners, representation from the petitioners being considered and final orders



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being passed have all been complied with, let the proceedings go on as regards Old Survey No.86. As regards Old Survey No.85 (New Survey No.124/1) if there is any action in future all the rights and contentions of both sides are preserved/protected, in other words, this order will neither serve as an impetus nor impede any further proceedings in future (if any) as regards Old Survey No.85 (New Survey No.124/1).

8. In the light of the narrative and discussion thus far, as the procedure under said Act has been duly complied, we are not interfering qua captioned WP and the captioned WP is being disposed of as closed albeit with the aforementioned observation and with the aforementioned recording of stated position of learned State counsel who has made very fair submission. Consequently, captioned Writ Miscellaneous Petition (WMP) is also disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (K.R.S.,J.)
05.12.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

- 1.The District Collector,
Singaravelar Maligai, Chennai – 1.
- 2.The Divisional Engineer (H),
O/o. The Divisional Engineer (H),
CMDP Division I, Alandur, Chennai – 16.
- 3.The Assistant Divisional Engineer,
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**M.SUNDAR, J.,
and
K.RAJASEKAR, J.,**

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