



W.P.No.37662 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.37662 of 2024

and

W.M.P.No.40722 of 2024

in

W.P.No.37662 of 2024

M/s.Alva Hospital (P) Ltd.,
No.74/A-2, Meenkarai Road
Ambarapalayam, Pollachi - 642 103
Rep. by its Director
Dr.Vasanthkumar Alva
S/o.K.Subbaiah Alva

... Petitioner

Vs.

1. The Assistant Divisional Engineer (Highways)
Construction and Maintenance
Anamalai Sub Division
Pollachi, Coimbatore District.
2. The Junior Engineer (Highways)
Construction and Maintenance
Anamalai Sub Division
Pollachi, Coimbatore District.
3. The District Collector
Coimbatore District.

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4. The Tahsildar
Pollachi Taluk
Coimbatore District.

... Respondents

Prayer :

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records in letter No.169-84 A/2024-U dated 04.11.2024 passed by the 1st respondent and quash the same and further direct the 1st respondent to consider the petitioner's representation dated 17.11.2024 granting time to remove the compound wall in front of the petitioner's hospital at No.74/A-2, Meenkarai Road, Ambarampalayam, Pollachi, Coimbatore District - 642 103.

For Petitioner : Mr.V.M.Venkataramana
For Respondents : Mr.V.Ravi
Special Government Pleader

ORDER

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

A notice dated 04.11.2024 bearing letter No.169-84 A/2024/U issued by R1 [The Assistant Divisional Engineer (Highways)] has been assailed in the captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity}. This '04.11.2024 notice' shall hereinafter be referred to as 'impugned notice' for the sake of brevity, convenience and clarity.

2. The impugned notice is captioned 'Show Cause Notice' {'SCN'} and

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it says that it has been issued under Section 28(2)(ii) of 'the Tamil Nadu Highways Act, 2001' {hereinafter 'TN Highways Act' for the sake of brevity}

3. Mr.V.M.Venkataramana, learned counsel for writ petitioner submits that though the caption in the impugned notice is SCN and though impugned notice says that it has been issued under Section 28(2)(ii) of TN Highways Act, it directly calls upon the writ petitioner to remove the encroachment (compound wall) without show causing the writ petitioner.

4. Issue notice to respondents.

5. Mr.V.Ravi, learned Special Government Pleader accepts notice for all four respondents.

6. Learned State Counsel, on instructions submits that it is a clear case of encroachment as even according to writ petitioner, the prayer is to consider a representation dated 17.11.2024 and grant time to remove the compound wall.

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

8. Section 28(2)(ii) together with proviso thereof of TN Highways Act



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reads as follows:

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'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.'

{underlining made by this Court for ease of reference}

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

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

(1)

(2)

(3)

(4)

(5)



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(6)

(7)

(8)

(9)

(10)

(11)

(12)

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

10. Section 2(13) of TN Highways Act takes us to Section 5(2) of TN

Highways Act and Section 5(2) reads as follows:

'5. Appointment of Highways Authorities -

(1)

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

11. To be noted, 'Government' has also been defined in Section 2(11)

of TN Highways Act and the same reads as follows:

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

(1)

(2)

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- (3)
(4)
(5)
(6)
(7)
(8)
(9)
(10)
(11) *'Government' means the State Government.'*

12. Learned State Counsel submits that Divisional Engineer has authorised R1 to issue the impugned notice. Section 28(2) of TN Highways Act makes it clear that a notice under Section 28 can be issued either by the Highways Authority or any person authorised by the Highways Authority.

13. Reverting to the impugned notice, in the light of the language in which Section 28(2)(ii) of TN Highways Act and proviso thereat is couched, we deem it appropriate to write that the impugned notice shall now be treated as SCN and representation of writ petitioner dated 17.11.2024 shall be treated as representation in response to the impugned SCN. In the light of proviso to Section 28(2)(ii) of TN Highways Act, the authority or officer concerned should now pass final orders considering the representation of



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writ petitioner. In any event, we hasten to add that the prayer in the writ petition itself is grant of time for removal of encroachment. This means that writ petitioner does not enter upon dispute or contestation qua encroachment.

14. If the impugned notice dated 04.11.2024 is treated as SCN and representation of writ petitioner dated 17.11.2024 is treated as response to SCN and if orders are made by authority or officer concerned that will satisfy requirement of show causing the writ petitioner and that will also satisfy requirement qua Section 28(2)(ii) of TN Highways Act.

15. The narrative, discussion and dispositive reasoning means that certiorari limb of prayer is not answered in the affirmative but there is a rider that the impugned notice is sustained as SCN. Mandamus limb of prayer is answered by saying that writ petitioner's representation dated 17.11.2024 shall now be treated as response to impugned notice which is now SCN which means that the authority or officer concerned shall make final orders.

Captioned WP disposed of in the aforesaid manner with aforesaid observations and directives. Consequently, Writ Miscellaneous Petition is also disposed of as closed. There shall be no order as to costs.



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(M.S.,J.)

(K.R.S.,J.)

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Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

mk

To

1. The Assistant Divisional Engineer (Highways)
Construction and Maintenance
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Pollachi, Coimbatore District.
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