



W.P.(MD)No.24036 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.10.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

W.P.(MD)No.24036 of 2024
and
W.M.P.(MD)Nos.20355, 20356 & 20357 of 2024

Kamaraj

... Petitioner

-Vs-

1. The District Collector,
Virudhunagar District,
Virudhunagar.

2. The Tahsildar,
Kariapatti,
Virudhunagar District.

3. The Block Development Officer,
Kariapatti,
Virudhunagar District.

4. The Revenue Divisional Officer,
Aruppukottai,
Virudhunagar District.

5. The Assistant Engineer,
Highways Department,
Aruppukottai,
Virudhunagar District.



6. The Secretary,
Kariapatti Town Panchayat,
Virudhunagar District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records passed by the 4th respondent in proceedings Na.Ka.No.664/2024/a1 dated 03.09.2024 which resulted in the unlawful demolition of the staircase of the petitioner's building and quash the same and consequently, direct the respondents to restore the staircase and any other affected portions of the petitioner's property to their original condition within the time stipulated by this Court.

For Petitioner : Mr.T.Xavier Devsahyam

For Respondents : Mr.S.P.Maharajan
Special Government Pleader for R1 to R5

: Mr.P.T.Thiraviyam
Government Advocate for R6

ORDER

[Order of the Court was made by **R.SUBRAMANIAN, J.**]

The claim of the petitioner is that the Highways Department had demolished a portion of the staircase leading to his house without any notice. Section 28 of the Tamilnadu Highways Act, 2001, which deals with removal of encroachments reads as follows:



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“28.(1) The Highways authority or any person authorised by it in this behalf shall, at such time as may be considered necessary, conduct such checks and periodical inspection, of the highway boundaries, with the view to ensure the prevention of unauthorised encroachment and the removal of such encroachment.

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

(i) remove, without any notice, any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching the highway or in any area where the construction or development of a highway is undertaken or proposed to be undertaken;

(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.”

2. The procedure as set out in the provision is that where encroachment is made by way of immovable structure, a show cause notice is required to be issued granting seven days to show cause against such removal. Any objection received within seven days must be considered by the Officer before passing final orders. Since the complaint of the



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petitioner was that the procedure prescribed under Section 28(2) has not been followed, we had required the learned Special Government Pleader to produce the files relating to the eviction proceedings. We find that no notice was issued as required under Section 28(2) of the Act. A public notice appears to have been given and signatures have been obtained from about 122 persons. The status report filed by the Assistant Divisional Engineer, Highways Department, shows that the people were informed orally about the removal of encroachment and a flex board containing the warning to the effect that the encroachments will be removed on a particular date, was also placed in the locality.

3. From the above, it is clear that the authorities have not followed the procedure prescribed under the Act while removing the encroachments. We are not justifying the actions of the encroachers. When the law provides for a particular method or procedure for removal of encroachment, such procedure shall be followed by the authorities. If there is any deviation or digression, the same cannot be upheld by the Court, particularly, this Court, exercising jurisdiction under Article 226 of the Constitution of India. The alleged encroachment has been removed without notice and without opportunity to the petitioner to show cause as to whether he has encroached upon the Highways property or not. We are



not directing the restoration of the encroachment since it is said to be an encroachment of the Highways land.

4. We, therefore, issue the following directions:

(i) The Revenue Tahsildar, Kariyapatti, is directed to depute a qualified Surveyor to measure the property of the petitioner as well as the Highways and if it is found to be an encroachment, the removal of the encroachment will be sustained;

(ii) If it is found that the construction that has been removed was in the land belonging to the petitioner, the Highways Department will not only restore the construction but also will pay cost of Rs.1,00,000/- (Rupees One Lakh only) to the writ petitioner for damages and the mental agony caused to him;

(iii) However, for having removed the encroachment without notice, the Assistant Divisional Engineer Highways Department, Aruppukottai will pay a cost of Rs.10,000/- to the writ petitioner;

(iv) The Highways Department will also ensure that this kind of infractions of law are not repeated by taking appropriate disciplinary proceedings against all the Officers who are involved in the removal of encroachment in Kariyappatti; and



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(v) The Tahsildar, Kariyapatti will depute a Surveyor within a period of 15 days from today. The Surveyor, who visited the property prior to the removal, shall not be deputed for this purpose.

5. With the above directions, this writ petition is disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

(R.S.M., J.) (L.V.G., J.)
21.10.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

PJL

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