



W.P(MD)No.25647 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2024

CORAM :

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

**W.P(MD)No.25647 of 2024
and
W.M.P.(MD)No.21755 of 2024**

Vijaya, W/o.Deva

... Petitioner

vs.

The Divisional Engineer,
National Highways,
Highways Department of
Government of Tamil Nadu,
Trichy.

... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the respondent in Lr.No.12/Encroachment/NH210/A2/2022, dated 21.10.2024 and quash the same.

For Petitioner : Mr.M.Saravanan

For Respondent : Mr.S.R.A.Ramachandran
Additional Government Pleader

ORDER

(Order of the Court was made by R.SUBRAMANIAN, J.)

The notice issued under Section 26(2) of the Control of National Highways [Land and Traffic] Act, 2002, is under challenge in this Writ Petition.



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2. This case has a chequered history. Originally, a notice was issued by the respondents under Section 5 of the National Highways Act, 1956. The same was put to challenge. This Court rejected the challenge. The petitioner went on appeal to the Hon'ble Supreme Court. The Hon'ble Supreme Court set aside the orders of the Division Bench of this Court on the conclusion that invocation of Section 5 of the National Highways Act, 1956, for removal of encroachments on National Highways is impermissible and the law that is to be applied is the Control of National Highways [Land and Traffic] Act, 2002. It was also held that the notices for removal of encroachment shall be issued by the Highway Administration or the Officer authorized by the Highway Administration only and no one else. This judgment of the Hon'ble Supreme Court was dated 24.08.2021. Thereafter, notices were issued on 25.04.2022 by the Divisional Engineer, National Highways, Highways Department, Trichy.

3. The said notices were challenged in several Writ Petitions and they were disposed of by a common order by us on 18.04.2023. After advertng to the provisions of Section 3(2) and Section 26 of the Control of National Highways [Land and Traffic] Act, 2002, we had held that it is only the Executive Engineer, who has been authorized to issue such notices and the Divisional Engineer cannot issue notices for eviction.



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4. The contention of the learned Additional Advocate General that the post of Divisional Engineer and the Executive Engineer are one and the same, was specifically rejected by us. Accepting the said judgment, the Ministry of Road Transport and Highways, Government of India, New Delhi, issued an order authorizing the Divisional Engineers to exercise powers and functions of the Highway Administration conferred under Sections 24, 26, 27, 30, 33, 36, 37 and 43 of the Control of National Highways [Land and Traffic] Act, 2002.

5. The said order was issued on 30.05.2024. Thereafter, the impugned notices have been issued by the Divisional Engineer on 21.10.2024. Though the petitioner would vehemently question the competence of the Divisional Engineer to issue such notices, we are unable to sustain the said submission in view of the fact that the Divisional Engineer has been authorised to exercise the powers of Highway Administration, by the order dated 30.05.2024. However, we find that the provisions of Section 26 of the Control of National Highways [Land and Traffic] Act, 2002, have not been scrupulously followed. Section 26 of the Control of National Highways [Land and Traffic] Act, 2002, prescribes an elaborate procedure for removal of encroachments. The said provision reads as follows:-

"26. Removal of unauthorised occupation.—(1)



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Where the Highway Administration or the officer authorised by such Administration in this behalf is of the opinion that it is necessary in the interest of traffic safety or convenience to cancel any permit issued under sub-section (2) of section 24, it may, after recording the reasons in writing for doing so, cancel such permit and, thereupon, the person to whom the permission was granted shall, within the period specified by an order made by the Highway Administration or such officer restore the portion of the Highway specified in the permit in such condition as it was immediately before the issuing of such permit and deliver the possession of such portion to the Highway Administration and in case such person fails to deliver such possession within such period, he shall be deemed to be in unauthorised occupation of highway land for the purposes of this section and Section 27.

(2) When, as a result of the periodical inspection of highway land or otherwise, the Highway Administration or the officer authorised by such Administration in this behalf is satisfied that any unauthorised occupation has taken place on highway land, the Highway Administration or the officer so authorised shall serve a notice in a prescribed form on the person causing or responsible for such unauthorised occupation and to restore such highway land in its original condition as before the unauthorised occupation within the period specified in the notice.



(3) The notice under sub-section (2) shall specify therein the highway land in respect of which such notice is issued, the period within which the unauthorised occupation on such land is required to be removed, the place and time of hearing any representation, if any, which the person to whom the notice is addressed may make within the time specified in the notice and that failure to comply with such notice shall render the person specified in the notice liable to penalty, and summary eviction from the highway land in respect of which such notice is issued, under sub-section (6).

(4) The service of the notice under sub-section (2) shall be made by delivering a copy thereof to the person to whom such notice is addressed or to his agent or other person on his behalf or by registered post addressed to the person to whom such notice is addressed and an acknowledgment purporting to be signed by such person or his agent or other person on his behalf or an endorsement by a postal employee that such person or his agent or such other person on his behalf has refused to take delivery may be deemed to be prima facie proof of service.

(5) Where the service of the notice is not made in the manner provided under sub-section (4), the contents of the notice shall be advertised in a local newspaper for the knowledge of the person to whom the notice is addressed



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and such advertisement shall be deemed to be the service of such notice on such person.

(6) Where the service of notice under sub-section (2) has been made under sub-section (4) or sub-section (5) and the unauthorised occupation on the highway land in respect of which such notice is served has not been removed within the time specified in the notice for such purpose and no reasonable cause has been shown before the Highway Administration or the officer authorised by such Administration in this behalf for not so removing unauthorised occupation, the Highway Administration or such officer, as the case may be, shall cause such unauthorised occupation to be removed at the expenses of the Central Government or the State Government, as the case may be, and impose penalty on the person to whom the notice is addressed which shall be five hundred rupees per square meter of the land so unauthorisedly occupied and where the penalty so imposed is less than the cost of such land, the penalty may be extended equal to such cost.

(7) Notwithstanding anything contained in this section, the Highway Administration or the officer authorised by such Administration in this behalf shall have power without issuing any notice under this section to remove the unauthorised occupation on the highway land, if such unauthorised occupation is in the nature of—

(a) exposing any goods or article—



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(i) in open air; or

(ii) through temporary stall, kiosk, booth or any other shop of temporary nature,

(b) construction or erection, whether temporary or permanent, or

(c) trespass or other unauthorised occupation which can be removed easily without use of any machine or other device,

and in removing such occupation, the Highway Administration or such officer may take assistance of the police, if necessary, to remove such occupation by use of the reasonable force necessary for such removal.

(8) Notwithstanding anything contained in this section, if the Highway Administration or the officer authorised by such Administration in this behalf is of the opinion that any unauthorised occupation on the land is of such a nature that the immediate removal of which is necessary in the interest of—

(a) the safety of traffic on the Highway; or

(b) the safety of any structure forming part of the Highway,

and no notice can be served on the person responsible for such unauthorised occupation under this section without undue delay owing to his absence or for any other reason, the Highway Administration or the officer authorised by such Administration may make such construction including alteration of any construction as may be feasible at the



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prescribed cost necessary for the safety referred to in clause (a) or clause (b) or have such unauthorised occupation removed in the manner specified in subsection (7).

(9) The Highway Administration or an officer authorised by such Administration in this behalf shall, for the purposes of this Section or Section 27, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) issuing commissions for the examination of witnesses; and

(d) any other matter which may be prescribed, and any proceeding before such Administration or officer shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196, of the Indian Penal Code (45 of 1860) and the Administration or the officer shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

[Emphasis supplied]



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6. A reading of the above provision lays down the procedure that is to be followed by the officer authorized by the Highway Administration in removal of encroachments.

- Section 26(2) of the Control of National Highways [Land and Traffic] Act, 2002 requires the Officer to issue notice to persons, who are responsible for unauthorized occupation requiring him to remove such unauthorized occupation.
- Section 26(3) of the Control of National Highways [Land and Traffic] Act, 2002 sets out the contents of the said notice. It requires notice to disclose,
 - (a) the Highway land in respect of which the notice is issued;
 - (b) the period within which the unauthorized occupation of such land was required to be removed;
 - (c) the time within which the noticee is required to submit his objections;
 - (d) the place and time of hearing of any representation, which is made pursuant to the notice by the noticee; and
 - (e) it also states that the notice shall inform the noticee that failure to comply with the notice will render the person liable to penalty and summary eviction under sub-section (6).



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7. Sub-section (4) of Section 26 of the Control of National Highways [Land and Traffic] Act, 2002, prescribes the mode of service of the notice. Sub-section (5) prescribes an alternate mode of service, if service under sub-section (4) is not possible. Sub-section (6) provides for consideration of the cause that is shown by the noticee and enables the Administration or the Officer authorized by the Highways Department to remove the encroachment if the explanation is not satisfactory.

8. The above would show that Section 26 of the Control of National Highways [Land and Traffic] Act, 2002, contemplates an opportunity to be given to the person to show cause against the proposed eviction. It also imposes an obligation on the Officer authorized by the Highway Administration to hear the person, if he objects to the notice and pass orders after hearing the objections. The impugned notice, dated 21.10.2024, is not in compliance with the provisions of Section 26 of the Control of National Highways [Land and Traffic] Act, 2002. The steps that are prescribed under sub-sections 2 and 3 have been completely overlooked and the Officer has passed an order for eviction under sub-section (6) straightaway. Hence, we are unable to sustain the notice.



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9. The notice is, therefore, quashed. The Writ Petition will stand allowed. It will be open to the respondents to proceed strictly in accordance with law as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

(R.S.M, J.) (L.V.G, J.)
24.10.2024

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Neutral Citation : No
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To

The Divisional Engineer,
National Highways,
Highways Department of
Government of Tamil Nadu,
Trichy.



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R.SUBRAMANIAN, J.
and
L.VICTORIA GOWRI, J.

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