



W.P.(MD) No.26059 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.10.2024

CORAM:

**THE HONOURABLE MR.K.R.SHRIRAM, CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

W.P.(MD) No.26059 of 2024

and

W.M.P.(MD) Nos.22093 & 22095 of 2024

Mariappan

... Petitioner

-VS-

- 1.The District Collector
District Collectorate
Theni District
- 2.The Tahsildar
Tahsildar Office
Andipatti Taluk, Theni District
- 3.The Divisional Engineer
Office of the Division Engineer
Highways Department
(Construction and Maintenance)
Theni Division, Theni District
- 4.The Assistant Divisional Engineer
Office of the Assistant Division Engineer
Highways Department
(Construction and Maintenance)
Aandipatti, Theni District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a



W.P.(MD) No.26059 of 2024

writ of certiorarified mandamus calling for the records pertaining to the impugned Notice in Ku.No.07/2024/Eva.A dated 18.10.2024 issued by the fourth respondent and quash the same as illegal and consequently direct the respondents to conduct a joint survey of the S.F.Nos.356 and Old S.F.No.125 , Erathimakkalpatti Village, Okkaraipatti Post, Andipatti Taluk, Theni District in petitioner's presence and prepare the sketch clearly demarcating the portion acquired by the Highways Division and the boundaries of petitioner's land situated in S.F.No.365/13, Erathimakkalatti Village, Okkaraiatti Post, Andipatti Taluk, Theni District.

For Petitioner : Mr.M.Pozhilan
for Mr.R.Manoharan

For Respondents : Mr.P.T.Thiraviyam
Government Advocate

ORDER

[Order of the Court was made by The Hon'ble CHIEF JUSTICE]

The short issue in this petition is that the impugned order dated 18th October, 2024 has been passed without considering petitioner's reply dated 19th September, 2024 to the show cause notice and also without giving a personal hearing to the petitioner.

2. Shri M.Pozhilan submitted that Sub Section (2) (ii) of Section 28 of



W.P.(MD) No.26059 of 2024

the Tamil Nadu Highways Act, 2001, envisages a notice be given before any immovable structure is removed and the proviso thereto also requires that any representation received in response to the said notice shall be considered by the authority or officer concerned before passing final orders.

3. Counsel for respondents, per contra, submitted that the impugned order does refer to the show cause notice dated 9th September, 2024, and it cannot be stated that the respondents did not comply with the requirements prescribed under Section 28 of the said Act.

4. Shri M.Pozhilan submitted that the impugned order, though may refer to notice dated 9th September, 2024, does not even refer to the reply dated 19th September, 2024, a copy whereof is annexed in the typed set. Counsel further submitted that when the Section provides that the representation shall be considered before passing final orders, even the order should reflect application of mind by the concerned authority. The order impugned does not reflect that the reply has been considered because it does not even reply to the reply dated 19th September, 2024. Counsel further submitted that the order should speak for itself and the same cannot be expanded even by a counter-affidavit.



WEB COPY



W.P.(MD) No.26059 of 2024

5. We have heard the counsels.

6. Section 28(2)(ii) of the said Act reads as under:

“28.Prevention of encroachment.-(1) ...

(2) ...

(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 of thereof:

Provided that any representation received within the time-limit shall be considered by the authority or officer concerned before passing final orders.”

7. The Section provides that when the authority or any person authorized by it decides to remove any immovable structure, whether permanent or temporary in nature that is encroaching the highway or in the area vested with Government, a show cause notice against such removal has to be issued. It also prescribes a period of seven days from the date of receipt thereof has to be given to the parties to respond. The proviso states that any representation received



W.P.(MD) No.26059 of 2024

within the time-limit shall be considered by the authority or officer concerned before passing final orders. The order impugned does not reflect that the representation was received beyond the time-limit prescribed. In fact, as submitted by Shri M.Pozhilan, there is not even a reference to the petitioner's representation dated 19th September, 2024.

8. The impugned order also does not reflect application of mind to the representation made by petitioner and therefore it is quite obvious that the representation has not even been considered.

9. In the circumstances, we are satisfied that the order dated 18th October, 2024 impugned in the petition cannot be sustained. The same is hereby quashed and set aside.

10. We remand the matter to the authority for *de novo* consideration. The authority shall, before passing any final orders, give a personal hearing to the petitioner. Notice thereof shall be communicated, at least five working days, in advance. The order to be passed shall be a reasoned order dealing with all submissions of the petitioner.



W.P.(MD) No.26059 of 2024

WEB COPY

11. Writ petition is disposed of. We hasten to add we have not considered the merits of the matter. There shall be no order as to costs. Consequently, interim applications stand disposed of.

[K.R.SHRIRAM., C.J.]

[MOHAMMED SHAFFIQ,

J.]

30.10.2024

NCC : Yes / No
Index : Yes / No

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District Collectorate,
Theni District.
- 2.The Tahsildar,
Tahsildar Office,
Andipatti Taluk,
Theni District.
- 3.The Divisional Engineer,
Office of the Division Engineer,
Highways Department,
(Construction and Maintenance),
Theni Division, Theni District.
- 4.The Assistant Divisional Engineer,
Office of the Assistant Division Engineer,



W.P.(MD) No.26059 of 2024

Highways Department,
(Construction and Maintenance),
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