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W.P.No.412 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2025

CORAM:

THE HON'BLE MR. JUSTICE M. SUNDAR
AND
THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P.No.412 of 2025 and W.M.P. No.472 of 2025

Roja Amma

Petitioner

vs.

1. The District Collector/Appellate Authority
Chennai District
Singaravelar Maaligai
Rajaji Salai
Chennai 600 001
2. The Assistant Executive Engineer
Public Works Department
Coovam Drainage Sub Division
Chepauk
Chennai 600 005
3. The Assistant Divisional Engineer (Highways)
Office of Assistant Divisional Engineer (Highways)
Chennai Metropolitan Development Scheme
Division 4 Sub Division 9
Alandur
Chennai 600 016

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records relating to the third respondent's notice no.3/Padikuppam/2024/U.Ko.Po-9/dated 17.12.2024 and quash the same.



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For petitioner Mr. K. Sakthivel

For respondents Mr. V. Ravi
Special Government Pleader

ORDER

(made by M.SUNDAR. J.)

Captioned main 'writ petition' (hereinafter 'WP' for the sake of brevity) has been filed with a certiorari prayer assailing a communication dated 17.12.2024 bearing reference அறிவிப்பு எண் 3/பாடிசூப்பம்/2024/உ.கோ.பொ. This communication has been issued by R3 (Assistant Divisional Engineer - Highways) and the same shall be referred to as 'impugned notice' for the sake of convenience and clarity.

2. The impugned notice has not been addressed to the writ petitioner. Nonetheless, Mr. K. Sakthivel, learned counsel for writ petitioner submits that the impugned notice has been pasted in writ petitioner's property.

3. Learned counsel for writ petitioner submits that the impugned notice directly calls upon the writ petitioner to remove the alleged encroachment within 15 days without even show causing the writ petitioner.



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4. Issue notice.

5. Mr. V. Ravi, learned Special Government Pleader, accepts notice for the respondents and submits, on instructions, that proceedings have already been initiated under 'the Tamil Nadu Land Encroachment Act, 1905 (Act III of 1905)' (hereinafter 'said 1905 Act' for the sake of brevity) and the same is pending at statutory appeal stage *i.e.*, statutory appeal under Section 10 of said 1905 Act and that the same is now pending before R1 (District Collector, Chennai). Pending proceedings under said 1905 Act, the impugned notice has been issued is learned State counsel's further say.

6. Owing to the limited scope of the captioned main WP, captioned main WP was taken up in the Admission Board with the consent of learned counsel on both sides.

7. We carefully considered the aforementioned submissions. We find that the impugned notice obviously contemplates proceedings under 'Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)' (hereinafter 'said Act' for the sake of brevity, clarity and convenience).



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8. Section 28 of said Act reads as follows:

'28. Prevention of encroachment – (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.'

9. A careful perusal of Section 28 of T.N. Highways Act brings to light that we are concerned with Section 28(2)(ii) and the proviso thereat as this provision provides for an alleged encroacher being show caused before calling upon the alleged encroacher to remove the encroachment, if any. In the case on hand, the



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impugned notice issued by R3 directly calls upon the alleged encroacher to remove the encroachment within 15 days without 'show cause notice' (hereinafter 'SCN' for the sake of brevity). Therefore, we are of the considered view that it would serve the ends of justice if the impugned notice is directed to be treated as SCN and if the writ petitioner (though not a noticee) is given an opportunity to send a representation (if so advised and if so desired) so that the authority or officer concerned can pass final orders considering the cause shown.

10. Before we write operative portion of this order, we deem it appropriate to write that sub-section (13) of Section 2 of said Act defines 'Highways authority'. This provision leads us to Section 5(2). Sections 2(13) and 5(2) of said Act read as follows:

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

- (1)
- (2)
- (3)
- (4)
- (5)
- (6)
- (7)
- (8)
- (9)
- (10)
- (11)
- (12)

(13) "Highways authority" means the officer appointed under sub-section (2) of section 5'



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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. We find that sub-section (2) of Section 28 makes it clear that a SCN can be issued by the 'Highways authority' or any person authorised by the Highways authority. In the case on hand, learned State counsel submits that R3 has been authorised by the Highways authority. This submission is recorded.

12. In the light of the narrative, discussion and dispositive reasoning set out *supra*, following order is passed:

i. The impugned notice being notice dated 17.12.2024 bearing reference அறிவிப்பு எண் 3/பாடிசூப்பம்/2024/உ.கோ.பொ issued by R3 shall now be treated as SCN;

ii. Writ petitioner can now send a response to the SCN within seven days from today *i.e.*, by 15.01.2025 (if so advised and if so desired);



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iii. If the writ petitioner sends such a representation, the same shall be considered on its own merits and in accordance with law by R3 and final orders shall be passed by R3 in accordance with the proviso to Section 28(2)(ii) of said Act;

iv. If the writ petitioner does not send a representation within 7 days, it is open to the respondents to proceed in accordance with law;

v. Though obvious, any further action *qua* removal of encroachment will be subject to / depending on final orders to be passed by R3 under proviso to Section 28(2)(ii) of said Act and the proceedings under said 1905 Act; and

vi. We also make it clear (though obvious) that we have not expressed any view or opinion on the merits of the matter, much less on the merits of the proceedings under said 1905 Act which are said to be pending. Let the proceedings under said 1905 Act continue on its own merits and in accordance with law.



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13. Captioned main WP is disposed of in the aforesaid manner. Consequently, captioned WMP thereat is disposed of as closed. There shall be no order as to costs.

[M.S., J.] [K.R.S., J.]
08.01.2025

cad



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M. SUNDAR, J.

and

K. RAJASEKAR, J.

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