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W.P.No.183 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.183 of 2025

and

W.M.P.No.195 of 2025

V.Govindaraj
S/o.Veeraiyan

... Petitioner

Vs.

1. The Divisional Engineer
Highways, Construction and Maintenance
Thiruvarur.
2. The Assistant Divisional Engineer
Highways, Construction and Maintenance
Kudavasal
Thiruvarur District.
3. The Assistant Engineer
Highways, Construction and Maintenance Division,
Valangaiman
Thiruvarur District.
4. The Tahsildar
Valangaiman Taluk
Valangaiman
Thiruvarur District.

... Respondents

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Prayer :

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Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records relating to eviction notices issued in Thakithu-170/2024/A2 dated 25.07.2024, 05.08.2024, 16.08.2024, 21.11.2024 and 10.12.2024 on the file of the 2nd respondent and to quash the same.

For Petitioner : Mr.S.Doraisamy
For Respondents : Mr.T.K.Saravanan
Government Advocate

ORDER

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

Captioned main 'Writ Petition' {'WP' for the sake of brevity} pertains to 'land comprised in S.No.253/41 in Molazhvancheri Village, Valangaiman Taluk, Tiruvarur District' {hereinafter 'said land' for the sake of brevity}.

2. Alleging encroachment by writ petitioner, 'five notices dated 25.07.2024, 05.08.2024, 16.08.2024, 21.11.2024 and 10.12.2024 all bearing reference No.Thakithu-170/2024/A2' {hereinafter collectively 'impugned notices' for the sake of brevity, convenience and clarity} were issued by R2 [The Assistant Divisional Engineer, Highways, Construction and



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Maintenance, Kudavasal, Thiruvarur District]. Assailing impugned notices,

captioned WP has been filed.

3. Notwithstanding very many averments and grounds raised in the writ support affidavit, Mr.S.Doraisamy, learned counsel on record for writ petitioner predicates his campaign against impugned notices on one solitary ground and that one solitary ground is that writ petitioner has not been show caused. To put it differently, no 'Show Cause Notice' {'SCN'} has been issued and writ petitioner vide impugned notices has been directly called upon to remove what is referred to as encroachment.

4. Issue notice to respondents.

5. Mr.T.K.Saravanan, learned Government Advocate accepts notice for all four respondents.

6. Mr.T.K.Saravanan, learned State Counsel draws our attention to second of impugned notices namely, notice dated 05.08.2024 and submits that there is a clear reference to writ petitioner's response dated 05.08.2024. Learned State Counsel also points out that writ petitioner when visited with impugned notices regarding encroachment qua said land has responded regarding S.No.253/36. Therefore, the writ petitioner has been given an



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opportunity is learned State Counsel's say.

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7. We carefully considered rival submissions. Though the second of impugned notices referred to supra mentions about writ petitioner's response, a SCN within the meaning of Section 28(2)(ii) of 'the Tamil Nadu Highways Act, 2001' {hereinafter 'TN Highways Act' for the sake of brevity} does not appear to have been issued.

8. Section 28 of TN Highways 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



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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.'

{underlining made by this Court for ease of reference}

9. We are concerned with Section 28(2)(ii) of TN Highways Act. 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. In this Act, unless the context otherwise requires:-

- (1)*
- (2)*
- (3)*
- (4)*
- (5)*
- (6)*
- (7)*
- (8)*
- (9)*



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(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 (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 from Section 28 of TN Highways Act that it talks about notice being issued by Highways Authority or any person authorised by the Highways Authority in this behalf.

12. Learned State Counsel submits that R1 is the Highways Authority and R2 has been authorised in this behalf. This submission is recorded.

13. In the light of the narrative thus far, the following order is passed:

(i) 5 impugned notices dated 25.07.2024,



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05.08.2024, 16.08.2024, 21.11.2024 and 10.12.2024, all bearing reference No.Thakithu-170/2024/A2 shall now be treated as SCNs;

(ii) It is open to writ petitioner to send a representation (if so advised and if so desired) within seven days from today i.e., on or before 14.01.2025;

(iii) If the writ petitioner sends representation as above, R2 shall pass final orders after considering the representation. To be noted, this is vide proviso to Section 28(2)(ii) of TN Highways Act;

(iv) If the writ petitioner does not send any representation by 14.01.2025, it is open to respondents to proceed further in accordance in law;

(v) Though obvious, it is made clear that any further action will be subject to and depending on final orders to be made by R2, if representation is sent.

Captioned main WP disposed of in the aforesaid manner.



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Consequently, Writ Miscellaneous Petition thereat disposed of as closed.

There shall be no order as to costs.

(M.S.,J.)

(K.R.S.,J.)

07.01.2025

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

mk

To

1. The Divisional Engineer
Highways, Construction and Maintenance
Thiruvarur.
2. The Assistant Divisional Engineer
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M.SUNDAR, J.,
and
K.RAJASEKAR, J.,

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