



W.P.No.631 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 27.06.2025

CORAM

THE HONOURABLE MR. JUSTICE M.SUNDAR
and
THE HONOURABLE MR. JUSTICE HEMANT CHANDANGOUDAR

W.P.No.631 of 2023 and W.M.P. No.568 of 2023

Abdul Munaf Sulthan

... Petitioner

VS.

1. The District Collector
O/o. District Collectorate
Mayiladuthurai District
Mayiladuthurai
2. The Revenue Divisional Officer
Mayiladuthurai
Mayiladuthurai District
3. The Divisional Engineer (H)
Construction and Maintenance
Highway Department
Mayiladuthurai
Mayiladuthurai District
4. The Assistant Divisional Engineer (H)
Construction and Maintenance
Highway Department

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Mayiladuthurai
Mayiladuthurai District

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5. The Junior Divisional Engineer (H)
Construction and Maintenance
Highway Department
Sembanarkoil
Mayiladuthurai District

6. The Tahsildar
Kuthalam Taluk
Mayiladuthurai District

7. M.S.Sankar

Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records pertaining to the impugned notice dated 16.12.2022 issued by the 5th respondent and quash the same and consequently forbearing the respondents from evicting the petitioner from the building of Jumma Pallivasal situated at Aduthurai - Tharangampadi Main Road, Mangainallur, Kuthalam Taluk, Mayiladuthurai District, comprised in S.F.No.32/4.

For petitioner : Mr. G.Pugazhenth

For respondents : Mr. K.Suresh
Government Advocate for R1 to R6

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Mr.R.Shivakumar
for M/s.K.M.Vijayan Associates for R7

ORDER

[was made by M.SUNDAR, J.]

Captioned main 'writ petition' [hereinafter 'WP' for the sake of brevity] has been filed *inter alia* assailing an 'order dated 16.12.2022 issued by R5 [Junior Divisional Engineer (H) {Construction and Maintenance} Highway Department, Sembanarkoil, Mayiladuthurai District]' [hereinafter 'impugned order' for the sake of brevity, convenience and clarity].

2. Mr. G.Pugazhenth, learned counsel on record for writ petitioner, Mr.K.Suresh, learned Government Advocate for R1 to R6 and Mr.R.Shivakumar, learned counsel of M/s.K.M.Vijayan Associates for R7 are before us.

3. Adverting to the impugned order, learned counsel for the writ petitioner, submitted that the impugned order has been issued under Section 28 of 'the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)' (hereinafter 'TN Highways Act' for the sake of brevity) but it has not called



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upon the writ petitioner to show cause in seven days. On the contrary, it straightaway calls upon the writ petitioner to remove alleged encroachment within seven days, is learned counsel's say.

4. The scope of captioned main WP is substantially narrow, legal drill on hand is very limited and therefore, with the consent of learned counsel on both sides, main WP is taken up for final disposal.

5. Before we proceed further, we deem it appropriate to extract and reproduce Section 28 of the TN Highways Act in its entirety and the same 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



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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.'

(underlining made by us for ease of reference)

6. A careful perusal of Section 28 of TN 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, without issuing a show cause notice (SCN), the impugned order passed by R1 directly states that in the event of failure of removal of encroachment by writ petitioner, encroachment will be removed.

7. It is also seen that the writ petitioner has responded to the impugned order *vide* his detailed response dated 21.12.2022, a scanned



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reproduction of which is as follows:

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அனுப்புனர்

எஸ்.அப்துல் முனாப்,
த/பெ. சுல்தான்,
ஜிம்மா பள்ளிவாசல் ஜமாத் தலைவர்
மெயின் ரோடு, மங்கைநல்லூர் 609404
குத்தாலம் தாலுக்கா, மயிலாடுதுறை மாவட்டம்.
செல்: 9943848117

தேதி. 21-12-2022

PT6041574341M IVR:8888888888
D. MAYILADUTHURAI H.O.
Counter No:21/12
For: MCHIL DHAIR, TALUK OFF India Post
PIN-609001, Mayiladuthurai H.O.
From: S. ABDUL MUN, MAYILADUTHURAI
M-15000
Rs:120.00 (Cash)
Track on www.indiapost.gov.in

பெறுனர்:

உயர்திரு. மாவட்ட ஆட்சியர் அவர்கள்
மாவட்ட ஆட்சியர் அலுவலகம்,
மயிலாடுதுறை.

பொருள்: பள்ளிவாசல் அகற்றம் தொடர்பாக.

அய்யா,

நெடுஞ்சாலைத்துறையினர் சாலை விரிவாக்கம் செய்வதற்காக 20-12-2022 அன்று எனக்கு பள்ளிவாசலை அகற்றுமாறு நோட்டீஸ் கொடுத்துள்ளார்கள். அந்த பள்ளிவாசல் மங்கைநல்லூரில், ஆடுதுறை-தரங்கம்பாடி செல்லும் சாலையில் சுமார் 90 ஆண்டுகாலமாக நடைமுறையில் இருந்து வருகிறது. அந்த சாலையில் அதிக போக்குவரத்து நெரிசல் இல்லாத பகுதியாக உள்ளது என்தை தெரியப்படுத்துகிறோம்.

சாலை விரிவுபடுத்துவதில் எந்தவித ஆட்சேபனையும் எங்களுக்கு இல்லை. மேலும் சாலை விரிவாக்கத்திற்கு தேவையான இடம் பள்ளிவாசலுக்கு எதிர்புறம் அரசுக்கு சொந்தமான இடம் அதிகமாகவே உள்ளது. ஆனால் அரசியல்வாதிகளின் தூண்டுதலின் பேரில் தேவையின்றி பள்ளிவாசலை அகற்ற நோட்டீஸ் மூலம் கோரியுள்ளார்கள். இதனால், தேவையின்றி இக்கிராமத்தில் மதப்பிரச்சனையை தூண்டும் விதத்தில் அமைந்துவிடும். அய்யா அவர்கள் தயவுசெய்து பள்ளிவாசலை அகற்றாமலிருக்க நடவடிக்கை எடுக்க கேட்டுக்கொள்கிறோம்.

இப்படிக்கு,

நகல்:

1. உயர்திரு. கோட்டாட்சியர் அவர்கள், மயிலாடுதுறை
2. உயர்திரு. வட்டாட்சியர் அவர்கள், குத்தாலம்.

இணைப்பு: நெடுஞ்சாலைத்துறையின் அறிவிப்பு நகல்



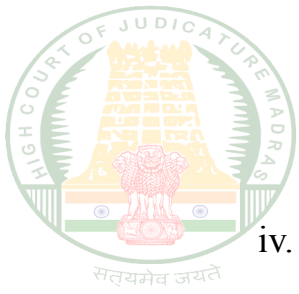
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8. In view of noncompliance of proviso to Section 28(2)(ii) of the

TN Highways Act, in order to secure the ends of justice, the following order is made:

- i. Impugned order shall be treated as a show cause notice (SCN) served on the writ petitioner today and the writ petitioner's representation dated 21.12.2022 (to first respondent) in response to the impugned order which is now directed to be treated as SCN, shall be considered on its own merits and in accordance with law by R5 and final orders shall be passed by R5 in accordance with proviso to Section 28(2)(ii) of TN Highways Act. Proviso to Section 28(2)(ii) of TN Highways Act, talks about 'any representation'. Therefore, it is open to R7 to send a representation within 7 days from today, if so advised and if so desired. The same shall also be considered by the Authority or Officer concerned before passing final orders;
- ii. Final order so passed shall be served on the writ petitioner within a period of five working days from the date of the final order;
- iii. If the final order to be passed by R5 ends up in favour of the writ petitioner, that would be curtains on the matter;



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- iv. If it happens to the contrary, in other words, if the final order to be passed by R5 is going to be adverse to the writ petitioner, the same shall be kept in abeyance for a fortnight from the date of service of the final order on the writ petitioner so as to provide a window to the writ petitioner to assail the said order if permissible in law or to seek judicial review of the said order;
- v. If the writ petitioner does not take recourse to either of the aforesaid two options within a fortnight from the date of service of the final order, the final order to be passed by R5 will be resuscitated and put into motion;
- vi. Though obvious, we make it clear that any further coercive action *qua* removal of encroachment will be subject to / depending on final orders to be passed by R5 under proviso to Section 28(2)(ii) of TN Highways Act; and
- vii. We also make it clear (though obvious) that we have not expressed any view or opinion on the merits of the matter and therefore, R5, while passing final order, shall do so untrammelled by the observations made in this order.



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Captioned WP stands disposed of with the aforementioned

observations and directives in the aforesaid manner. Consequently, the connected WMP is disposed of as closed. There shall be no order as to costs.

[M.S., J.]

[H.C., J.]

27.06.2025

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

gpa



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M.SUNDAR, J.

and

HEMANT CHANDANGOUDAR, J.

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