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W.P. No.5273 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

W.P.No.5273 of 2025 and W.M.P. No.5845 of 2025

N. Chaan Basha

Petitioner

vs.

The Assistant Divisional Engineer
(Highways) C & M
Tiruvallur Sub Division
Office of the Assistant Divisional Engineer
(Highways) C & M
Tiruvallur Sub Division
Tiruvallur

Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for records of the respondent in Kurippanai No.867/2024/Uthaviyalar dated 30.12.2024 and quash the same as arbitrary and illegal and consequently, forbear the respondent, his men and agents from in any manner interfering with the petitioner's possession of the property in S.No.12 at Toll Gate, Perumbakkam Village, Tiruvallur Town, of an extent of 0.03 cents.



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For petitioner Mr. N.A. Nassir Hussain

For respondent Mr. M.S. Arasakumar
Government Advocate

ORDER

[made by M.SUNDAR, J.]

Captioned main 'writ petition' (hereinafter 'WP' for the sake of brevity) has been filed *inter alia* assailing a notice dated 30.12.2024 bearing reference Kurippanai No.867/2024/Uthaviyalar issued by the sole respondent (hereinafter 'impugned notice' for the sake of convenience and clarity).

2. Mr. N.A. Nassir Hussain, learned counsel on record for the writ petitioner, adverting to the impugned notice, submits that the same refers to Section 28(2)(ii) of 'the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)' (hereinafter 'TN Highways Act' for the sake of brevity) but the writ petitioner has not been show caused.

3. Issue notice to the respondent.



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4. Mr. M.S. Arasakumar, learned Government Advocate, accepts notice for the sole respondent and submits that the writ petitioner has encroached upon a State Highway and therefore, the impugned notice has been issued.

5. Owing to the limited legal perimeter within which captioned main WP has to perambulate, captioned main WP is taken up with the consent of learned counsel on both sides.

6. Section 28(2)(ii) 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 undertaken.



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(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)

7. A careful perusal of Section 28 of TN Highways Act brings to light that an alleged encroacher has to be show caused by issue of a 'show cause notice' (hereinafter 'SCN' for the sake of brevity) returnable in seven days but the impugned notice straightaway calls upon the writ petitioner/noticee to remove the alleged encroachment. Therefore, we deem it appropriate to write that the impugned notice shall now be treated as a SCN under Section 28(2)(ii) of TN Highways Act. Before we write the operative portion, we deem it appropriate to write that the language of Section 28 makes it clear that a SCN under Section 28 should be issued by a 'Highways Authority'. The term 'Highways Authority' has been defined *vide* Section 2(13) of TN Highways Act which takes us to Section 5(2) of said Act. Section 5(2)



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read with Section 2(13) makes it clear that jurisdictional Divisional Engineer of Highways Department is the 'Highways Authority'.

However, Section 28 makes it clear that a SCN can be issued either by the Highways Authority or by any person authorised by the Highways Authority in this behalf. In the case on hand, learned State counsel submits, on instructions, that sole respondent has been authorised by Highways Authority.

8. In the light of the narrative thus far, the following order is made:

(i) Impugned notice being notice dated 30.12.2024 bearing reference Kurippanai No.867/2024/Uthaviyalar issued by sole respondent shall now be treated as a SCN;

(ii) Impugned notice which is now SCN shall be construed to have been served on the writ petitioner/noticee today (18.02.2025);



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(iii) Writ petitioner can respond to the
aforereferred SCN by sending a
response/representation within seven days from
today i.e., on or before 25.02.2025;

(iv) If the writ petitioner responds to the SCN
within the aforesaid time frame, the officer
concerned/authority shall consider the same and
pass 'final orders' within the meaning of proviso to
Section 28(2)(ii);

(v) If the writ petitioner/noticee does not
respond to the SCN within the aforereferred time
frame, it will be open to the sole respondent to
proceed further with regard to coercive action but if
the writ petitioner responds, coercive action, if any,
shall be subject to and depending on 'final orders' to
be made by sole respondent in the aforesaid manner.



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9. Captioned main WP stands disposed of in the aforesaid manner. As we have held that coercive action, if any, shall be subject to and depending on 'final orders' to be made by sole respondent under proviso to Section 28(2)(ii), captioned writ miscellaneous petition thereat becomes otiose and therefore, the same is disposed of as closed. There shall be no order as to costs.

(M.S., J.) (K.G.T., J.)
18.02.2025

cad
Index : Yes/No
NC : Yes/No



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M.SUNDAR, J.

and

K. GOVINDARAJAN THILAKAVADI, J.

cad

To:

The Assistant Divisional Engineer
(Highways) C & M
Tiruvallur Sub Division
Office of the Assistant Divisional Engineer
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Tiruvallur Sub Division
Tiruvallur

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