



W.P.No.3872 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

W.P.No.3872 of 2025

M/s.Alva Hospital (P) Ltd.,
No.74/A-2, Meenkarai Road,
Ambarapalayam,
Pollachi – 642 103 rep. By its
Director Dr.Vasanthkumar Alva

... Petitioner

Vs.

- 1.The District Collector,
Coimbatore District.
- 2.The Chief Divisional Engineer (Highways),
Construction and Maintenance,
Integrated Chief Engineers' Office,
Highway Research Station (HRS) Campus,
No.76, Sardar Patel Road, Guindy,
Chennai – 600 025.
- 3.The Divisional Engineer (Highways),
Construction and Maintenance,
Anamalai Sub Division,
Pollachi, Coimbatore District.
- 4.The Assistant Divisional Engineer (Highways),
Construction and Maintenance,
Anamalai Sub Division,
Pollachi, Coimbatore District.

... Respondents

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Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus to direct the respondents to consider the petitioner's representation dated 20.12.2024 under Section 26(2) of The Tamil Nadu Highways Act, 2001 for granting permission to use the highway land in front of the hospital building at No.74/A-2, Meenkarai Road, Ambarampalayam, Pollachi, Coimbatore District – 642 103 owned by the petitioner for the purpose of using the existing compound wall on payment of rent and other charges by petitioner's hospital along with the directions granted by this Court in W.P.No.37662 of 2024 dated 18.12.2024.

For Petitioner : Mr.V.M.Venkataramana

For Respondents : Mr.V.Ravi,
Special Government Pleader

ORDER

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

Captioned main 'Writ Petition' (hereinafter 'WP' for the sake of brevity) pertains to a 'representation dated 20.12.2024 from the Managing Director of the writ petitioner hospital to the four respondents' (hereinafter 'said representation' for the sake of convenience and clarity).

2. Mr.V.M.Venkataramana, learned counsel on record for writ petitioner advertng to said representation submits that said



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representation is a request under Section 26(2) of 'The Tamil Nadu Highways Act, 2001' (hereinafter 'TN Highways Act' for the sake of convenience and clarity). Section 26(2) of TN Highways Act reads as follows:

'26.Prevention of Unauthorised Occupation of and Encroachment on a Highway and Removal of Encroachment:

(1)

(2) Notwithstanding anything contained in sub-section (1), the Highways authority may, with the concurrence of the Collector and with due regard to the safety and convenience of traffic and subject to such conditions, and on payment of such rent or other charges as may be prescribed, grant permission, of a temporary nature, to any person -

(a) to make any temporary use of any highway in front of any building owned or occupied by him to make a temporary structure overhanging the highway; or

(b) to put up a temporary awning or tent, pandal or other similar erection or a temporary stall or scaffolding on any highway; or



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(c) to deposit to cause to be deposited building materials, goods for sale or other articles on any highway for a specified period; or

(d) to make a temporary excavation on any highway for carrying out any repairs or improvement to building on lands adjoining such highway.

Provided that no such permission shall be deemed to be valid beyond a period of one year, unless it is expressly renewed by the Highways authority.'

3. Issue notice.

4. Mr.V.Ravi, learned Special Government Pleader accepts notice for all four respondents.

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

6. Short facts are that the writ petitioner hospital is situate in Pollachi Cochin State Highway (SH 19); that writ petitioner has put up a compound wall i.e., a permanent structure on the State Highway in front of its property; that writ petitioner was visited with a notice



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dated 04.11.2024; that this 04.11.2024 notice was captioned 'show cause notice' (SCN) and it referred to Section 28(2)(ii) of TN Highways Act but it directly called upon the writ petitioner to remove encroachment without really show causing the writ petitioner; that writ petitioner responded to the SCN vide communication dated 17.11.2024 admitting encroachment and requesting for time to remove the encroachment saying that removal of encroachment without hindrance to the inpatients will take some time; that writ petitioner came to this Court by way of writ petition in W.P.No.37662 of 2024 assailing the SCN; that this writ petition (W.P. No.37662 of 2024) along with WMP thereat came to be disposed of by a Division Bench [to which one of us (M.Sundar, J.) is a party] vide order dated 18.12.2024; that vide this 18.12.2024 order, a direction was given to treat the 14.11.2024 notice as SCN and 17.11.2024 communication as response/representation; that thereafter, writ petitioner has given said representation stating that the same is under Section 26(2); that seeking disposal of said representation, captioned WP has been filed.

7. Mr.V.Ravi, learned State counsel waived the privileged communication immunity and placed before us written instructions



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from R4 (The Assistant Divisional Engineer (Highways), Construction and Maintenance, Anamalai Sub Division, Pollachi, Coimbatore District) to the State counsel being letter bearing reference Lr. No.W.P.3872/2025/JA dated 05.02.2025. To be noted, writ petitioner was favoured with a copy of this written instructions.

8. A careful perusal of the written instructions makes it clear that the structures put up by the writ petitioner in the State Highway (SH 19) are permanent structures and Section 26(2) of TN Highways Act would apply only to temporary use at the highest by putting up a temporary awning or tent, pandhal or similar erection or a temporary stall or scaffolding. Section 26(2) of TN Highways Act also makes it clear that such permission would not be valid beyond one year unless expressly renewed. In any event, said Section 26(2) of TN Highways Act makes it clear that even such permission for said temporary structure is after giving due regard to (a)safety (b)convenience of traffic and (c) subject to certain conditions.

9. In the case on hand, we find that R4 vide written instructions has made it clear that it is not possible to accede to the request of the



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writ petitioner as it does not pass muster qua safety and convenience of traffic. Moreover, as already alluded to supra, a structure already put up by writ petitioner is of permanent nature whereas Section 26(2) of TN Highways Act applies only to temporary structure. Another buttressing point is in response to 04.11.2024 SCN, writ petitioner vide representation dated 17.11.2024 has only sought for time to remove the encroachments, admitting the encroachment.

10. For all these reasons, we are of the considered view that the prayer in the captioned main WP to mandamus the respondents to accede to the petitioner's request qua said representation (representation dated 20.12.2024) cannot be acceded to.

11. Ergo, the sequitur is, captioned WP fails and the same is dismissed. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
06.02.2025

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Neutral Citation : Yes / No
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To

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Coimbatore District.
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**M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**
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