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W.P.No.4548 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2025

CORAM

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

W.P.No.4548 of 2025
and
W.M.P. No.5066 of 2025 in W.P.No.4548 of 2025

Capt. Shajan John Joseph (Retd.)

... Petitioner

Vs.

1.The Assistant Divisional Engineer,
Ambattur Sub Division,
Highways Department,
Avadi, Chennai – 600 054.

2.The Assistant Engineer,
Ambattur Sub Division,
Highways Department,
Avadi, Chennai – 600 054.

3.The Tahsildar,
Taluk Office,
Avadi, Chennai – 600 054.

... Respondents

Writ Petition filed under Article 226 of The Constitution of India
praying to issue a Writ of Mandamus directing the respondents to
measure the property of the petitioner herein bearing Door No.10/69A,
Vellanoor Main Road, Vellanoor, Avadi, Chennai – 600 054 measuring

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about 11 cents together with RCC building comprised in Survey No.432/1, as per patta New Survey No.432/7, Vellanoor Village and demarcate the Highways boundary before demolition of the petitioner's property and implementation of rainwater harvest project.

For Petitioner : Dr.S.S.Swaminathan

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 Door No.10/69A, Vellanoor Main Road, Vellanoor, Avadi, Chennai 600 054 (admeasuring 11 cents or thereabouts together with RCC building standing thereon). To be noted, this property is situate in Survey No.432/1 (New Survey No.432/7) in Vellanoor 2 Village, Avadi Taluk, Thiruvallur District.

2. The aforementioned property shall hereinafter be referred to as 'said property' for the sake of convenience and clarity.



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3. Dr. S.S. Swaminathan, learned counsel for writ petitioner, submits that the respondents are interfering *qua* said property without measuring, surveying and demarcating. In other words, respondents are taking steps to demolish the superstructure, is learned counsel's say.

4. Issue notice.

5. Mr. V. Ravi, learned Special Government Pleader, accepts notice for all three respondents and draws our notice to a communication dated 26.12.2024 bearing reference Ku.No.108/2024/C2 issued by R1 [Assistant Divisional Engineer, Ambattur Sub Division, Highways Department, Avadi, Chennai – 600 054]. To be noted, this communication is captioned 'காரணம் கேட்கும் குறிப்பாணை'.

6. As it is a case of alleged encroacher in a State Highway, 'The Tamil Nadu Highways Act, 2001 (TN Act 34 of 2002)' (hereinafter 'TN Highways Act' for the sake of convenience and clarity) comes into play.



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7. As regards TN Highways Act, Section 28 provides for show causing the alleged encroacher and passing an order i.e., 'final orders' if any representation is received within seven days period. To be noted, 'show cause notice contemplated under Section 28(2)(ii) of TN Highways Act' (hereinafter 'SCN' for the sake of brevity) is a SCN returnable in a period of seven days.

8. SCN vide Section 28 (2)(ii) of TN Highways Act has to be issued by 'Highways Authority' which is defined under Section 2(13) of TN Highways Act. Section 2(13) takes us to Section 5(2). Section 5(2) talks about 'Divisional Engineer' however Section 28(2) talks about 'Highways Authority' or 'any person authorised by it'.

9. Mr.V.Ravi, learned Special Government Pleader adverting to proceedings dated 01.10.2024 bearing reference Memo No.1957/2024/Nir-2 made by Highways Authority i.e., Office of Divisional Engineer, Thiruvallur Division, Thiruvallur (jurisdictional Divisional Engineer of the Highways Department) submits that R1 has been authorised and therefore R1 is competent to issue SCN under Section 28(2) of TN Highways Act.



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10. 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.

11. Reverting to the case on hand, we find that aforementioned SCN dated 26.12.2024 issued by R1 has been responded to by the writ petitioner vide representation dated 02.01.2025 addressed to R2. R2 shall forward the representation to R1 and R1 shall consider the representation and pass final orders within the meaning of proviso to Section 28(2)(ii) of TN Highways Act.

12. Though obvious, we make it clear that coercive action if any and if that be so will be subject to and depending on the final orders to be made by R1 /officer concerned. Such order shall be duly served on the writ petitioner within five working days from the date on which the order is made. If the order is in favour of the writ petitioner, that will be curtains on the matter but if the order is adverse to the writ petitioner, the same shall be kept in abeyance for ten days so as to enable the writ petitioner to work out remedies if any i.e., if so advised and if so desired.

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13. Captioned WP is disposed of in the aforesaid terms.

Consequently, captioned Writ Miscellaneous Petition (WMP) thereat is disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
10.02.2025

Index : Yes / No
Neutral Citation : Yes / No
mmi

To

- 1.The Assistant Divisional Engineer,
Ambattur Sub Division,
Highways Department,
Avadi, Chennai – 600 054.
- 2.The Assistant Engineer,
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- 3.The Tahsildar,
Taluk Office,
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**M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**
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