



W.P.No.4824 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2025

CORAM

THE HONOURABLE MR. JUSTICE M.SUNDAR
and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.P.No.4824 of 2025 and W.M.P.No.5342 of 2025

T. Kirubanandham

Petitioner

vs.

1. The Tahsildar
Gudiyatham Taluk
Gudiyatham
Vellore District

2. The Assistant Divisional Engineer
State Highways (Construction & Maintenance)
Gudiyatham
Vellore District

3. K. Natarajan

Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari to call for the records of the second respondent in connection with the impugned order passed by him in Memo – 2 dated 28.01.2025 and to quash the same.

For petitioners : Mr. S. Sivakumar

For RR 1 & 2 : Mr. V. Ravi

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Special Government Pleader
ORDER

[was made by M.SUNDAR, J.]

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Captioned main 'writ petition' [hereinafter 'WP' for the sake of brevity] has been filed *inter alia* assailing a 'order dated 28.01.2025 issued by R2 [Assistant Divisional Engineer, State Highways {Construction and Maintenance} Gudiyatham, Vellore District]' [hereinafter 'impugned order' for the sake of brevity, convenience and clarity].

2. Mr. S. Sivakumar, learned counsel on record for writ petitioner, advertng to the impugned order, 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 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.

3. Issue notice.

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4. Mr. V. Ravi, learned Special Government Pleader, accepts notice for official respondents *i.e.*, RR 1 and 2.

5. 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 in the Admission Board *i.e.*, Motion List.

6. Before we proceed further, we deem it appropriate to extract and reproduce Section 28 of 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 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 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' (hereinafter 'SCN' for the sake of brevity), the impugned order issued by R2 directly states that in the event of failure of removal of encroachment by writ petitioner, encroachment will be removed by authorities concerned on 13.02.2025. Therefore, we are of the considered view that it would serve the ends of justice if the impugned order is directed to be treated as SCN and if the writ petitioner is given an opportunity to send a representation (if so

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advised and if so desired) so that the authority or officer concerned can pass final orders considering the cause shown.

8. In the light of the narrative, discussion and dispositive reasoning set out *supra*, following order is passed:

i. The impugned order dated 28.01.2025 issued by R2 shall now be treated as SCN;

ii. Writ petitioner can now send a response to the SCN within seven days from today *i.e.*, by 19.02.2025 (if so advised and if so desired);

iii. If the writ petitioner sends such a representation, the same shall be considered on its own merits and in accordance with law by R2 and final orders shall be passed by R2 in accordance with the proviso to Section 28(2)(ii) of TN Highways Act;

iv. If the writ petitioner does not send a representation within 7 days, it is open to the official respondents to proceed in accordance with law;

v. 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



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R2 under proviso to Section 28(2)(ii) of TN Highways Act;

vi. We also make it clear (though obvious) that we have not expressed any view or opinion on the merits of the matter and therefore, R2, while passing final orders, shall do so untrammelled by the observations made in this order; and

vii. All the rights and contentions of private respondent are preserved for being canvassed before the authority concerned.

9. Captioned WP stands disposed of with the aforementioned observations and directives in the aforesaid manner. Consequently, captioned writ miscellaneous petition thereat is disposed of as closed. There shall be no order as to costs.

[M.S., J.]

[K.G.T., J.]

13.02.2025

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Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order



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To

1. The Tahsildar
Gudiyatham Taluk
Gudiyatham
Vellore District
2. The Assistant Divisional Engineer
State Highways (Construction & Maintenance)
Gudiyatham
Vellore District



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M.SUNDAR, J.

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