



W.P. No.5448 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2025

CORAM:

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

W.P.No.5448 of 2025 and W.M.P.No.6002 of 2025

Govindaswamy

Petitioner

VS.

The Assistant Divisional Engineer
Highways Department
Katpadi Road
Gudiyatham

Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus forbearing the respondent from evicting, demolishing the house and taking possession of petitioner's dwelling house situate in Village Natham Survey No.208, Melpatti Village, Gudiyatham Taluk (now Pernampet Taluk) with an extent of 2,250 sq. ft. pursuant to the eviction notice dated 07.02.2025.

For petitioner Mr. D. Rajagopal

For respondent Mr. V. Ravi
Special Government Pleader

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ORDER

[made by M.SUNDAR, J.]

Captioned main 'writ petition' (hereinafter 'WP' for the sake of brevity) has been filed with a mandamus prayer. The prayer is to forbear the sole respondent from effecting demolition and / or taking possession of writ petitioner's dwelling house in Survey No.208, Melpatti Village, Gudiyatham Taluk (now Pernampet Taluk), Vellore District (hereinafter 'said property' for the sake of convenience and clarity).

2. Mr. D. Rajagopal, learned counsel on record for writ petitioner, submits that the sole respondent has issued a generic notice dated 07.02.2025 (hereinafter 'said notice' for the sake of convenience and clarity) and that has necessitated the filing of captioned main WP. Adverting to said notice, learned counsel submits that the sole respondent, *vide* said notice, has called upon removal *inter alia* of said property on the ground that it is an encroachment.

3. Issue notice to sole respondent.



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4. Mr. V. Ravi, learned Special Government Pleader, accepts notice for sole respondent and submits that said property is allegedly an encroachment *qua* State Highway and that has necessitated the said notice.

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

6. As regards prevention of encroachment in a State Highway and / or removal of any encroachment in a State Highway, 'the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)' (hereinafter 'said Act' for the sake of brevity) comes into play. The most relevant provision *qua* case on hand is Section 28 and the same, in its entirety, 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--



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(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.

(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.'

7. A careful perusal of Section 28 of said Act brings to light that the writ petitioner ought to be show caused *vide* Section 28(2)(ii) *i.e.*, a show cause notice (hereinafter 'SCN' for the sake of brevity) returnable in seven days has to be issued and after considering the response/representation of the noticee/writ petitioner, the authority/officer concerned should pass 'final orders'.

8. In the case on hand, sole respondent is unable to demonstrate that the writ petitioner was show caused. This means that Section 28(2)(ii) adherence is not demonstrable.



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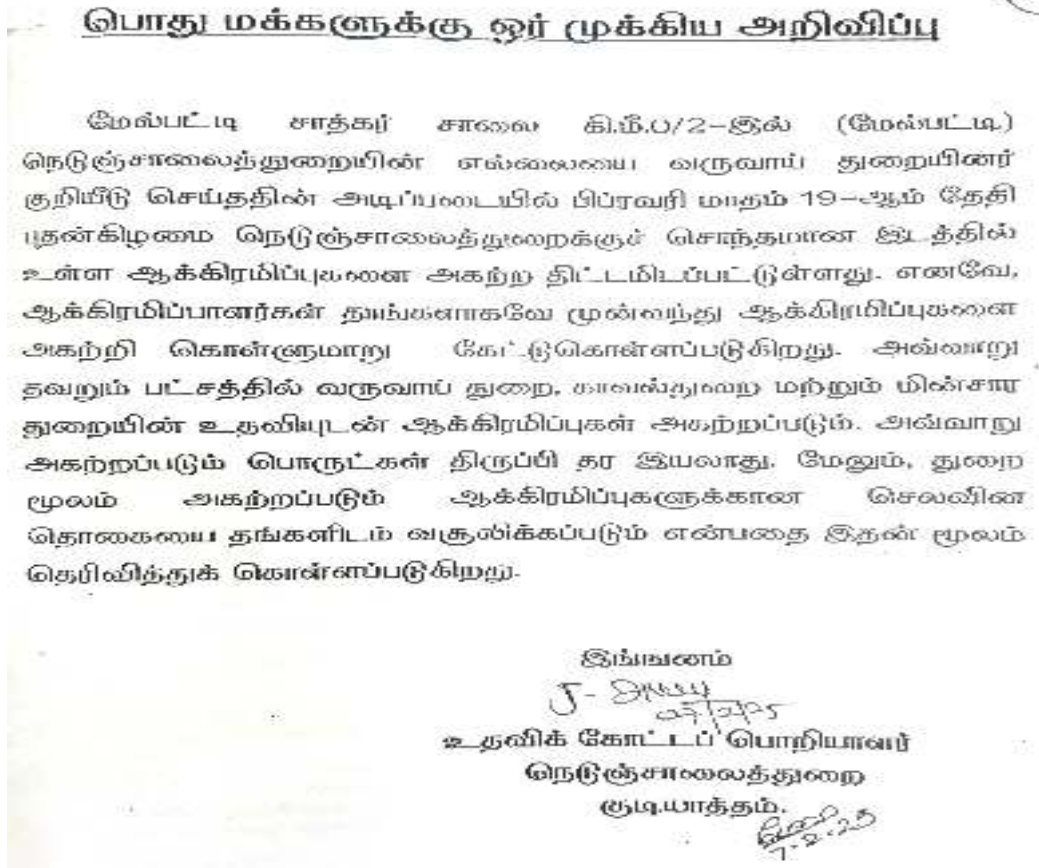


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9. In the light of the narrative thus far, the following order is passed:

(i) said notice *i.e.*, notice dated 07.02.2025, made by sole respondent, shall now be treated as an SCN with the meaning of Section 28(2)(ii) of said Act; (To be noted, a scanned reproduction of the said notice is as follows):





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(To be noted, a 28 SCN has to be issued either by 'Highways authority' or any other authorised person. The expression 'Highways authority' has been defined *vide* Section 2(13) of said Act which takes us to Section 5(2) and Section 5(2) talks about 'Divisional Engineer'. In the case on hand, learned State counsel submits that sole respondent has been authorised by Divisional Engineer in this regard. This submission is recorded);

(ii) SCN would be construed to have been served on the writ petitioner today (17.02.2025);

(iii) Therefore, writ petitioner shall now send a representation in response to SCN (if so advised and if so desired) within seven days from today *i.e.*, on or before 24.02.2025;

(iv) The sole respondent shall consider the representation/response of writ petitioner and pass 'final orders' in accordance with proviso to Section 28(2)(ii) of said Act;

(v) If the writ petitioner does not send a representation/response within seven days, as above, it is open to the sole respondent to proceed pursuant to said notice which is now being treated as SCN *vide* instant order;



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(vi) Final orders to be made by sole respondent under proviso to Section 28(2)(ii) shall be duly served on the writ petitioner with due acknowledgment within three working days from the date of the order and all rights and contentions of writ petitioner are preserved with regard to challenge to such an order, if it is adverse to the writ petitioner; and

(vii) Though obvious, we make it clear that coercive action (if any) shall be subject to and depending on final orders to be made by the sole respondent.

Captioned main WP stands disposed of in the aforesaid manner. As we have held that coercive action (if any) shall be subject to/depending on 'final orders', captioned writ miscellaneous petition thereat has become 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.)
17.02.2025

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NC : Yes/No

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M.SUNDAR, J.

and

K. GOVINDARAJAN THILAKAVADI, J.

cad

To

The Assistant Divisional Engineer
Highways Department
Katpadi Road
Gudiyatham

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