



WEB COPY



W.P.No.7543 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2025

CORAM

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

and

THE HONOURABLE MR.JUSTICE **HEMANT CHANDANGOUDAR**

W.P.No.7543 of 2023

and

W.M.P.No.7653 of 2023

1. C.K.Radharavi
S/o.K.Radha Krishnan

2. R.Indira Gandhi
W/o.Radharavi

... Petitioners

vs.

1. The Divisional Engineer
Tamil Nadu Highways Development Scheme-II
Kancheepuram
Opposite District Collectorate
Kancheepuram District.

2. The Assistant Divisional Engineer
Construction and Maintenance
Highways Department
Chengalpattu
Chengalpattu District.

... Respondents



W.P.No.7543 of 2023

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorarified Mandamus, calling for the records pertaining to the show cause notice issued by the second respondent herein dated 06.12.2022 under Section 28(2)(ii) of Tamil Nadu Highways Act, 2001 and consequently, quash the same as arbitrary and illegal for the absence of clause for compensation therein or in the alternative directing the respondents herein to pay the petitioners the said sum of Rs.23 Lakhs being the value of super structure put up in the area abutting the property bearing Grama Natham S.No.60/A bearing Plot No.125 measuring an extent of 5 cents situate at No.230, Vallam Village, Kattangalathur Panchayat Union, Chengalpattu District as mentioned in the impugned notice dated 06.12.2022 within a time frame.

For Petitioners : Mr.S.Hareshukesha
for Mr.S.Ruban Prabhu
For Respondents : Mr.T.K.Saravanan,
Additional Government Pleader

ORDER

[Order of the Court was 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 06.12.2022 issued by second respondent [The Assistant Divisional Engineer, Construction and Maintenance, Highways Department, Chengalpattu, Chengalpattu District]'



W.P.No.7543 of 2023

WEB COPY

{hereinafter 'impugned order' for the sake of brevity, convenience and clarity}.

2. Adverting to the impugned order, Mr.S.Hareshuksha, learned counsel representing Mr.S.Ruban Prabhu, counsel on record for writ petitioners, submitted that the impugned order has been issued under Section 28(2)(ii) of 'The Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)' [hereinafter 'Highways Act' for the sake of brevity] but it has not called upon the writ petitioners to show cause in seven days. On the contrary, it straightaway calls upon the writ petitioners to remove alleged encroachment within seven days, is learned counsel's say.

3. Mr.T.K.Saravanan, learned Additional Government Pleader, for both the respondents is before us.

4. 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 for final disposal.

5. Before we proceed further, we deem it appropriate to extract and reproduce Section 28 of 'The Tamil Nadu Highways (Amendment) Act, 2024 (Tamil Nadu Act 11 of 2024) [hereinafter 'Amended Highways Act' for



W.P.No.7543 of 2023

the sake of convenience and clarity] in its entirety and the same reads as

follows:

'28. Prevention of encroachment – (1) The Administrator 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 Administrator 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.

(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 the sake of specificity)

6. A careful perusal of Section 28 of Amended 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



W.P.No.7543 of 2023

before being calling upon to remove the alleged encroachment, if any. In the case on hand, without issuing a 'show cause notice' ('SCN'), the impugned order issued by second respondent directly states that in the event of failure of removal of encroachment by writ petitioners, encroachment will be removed by the Highways Department itself and the cost incurred therefor will be recovered from the writ petitioners.

7. In view of non-compliance of proviso to Section 28(2)(ii) of Amended Highways Act, in order to secure the ends of justice, the following order is made:

(i) Impugned order dated 06.12.2022 shall now be treated as SCN served on the writ petitioners today (19.08.2025);

(ii) It is open to writ petitioners to send a representation, in response to the impugned order (if so advised and if so desired) within seven days from today i.e., on or before 26.08.2025;

(iii) If the writ petitioners send a representation as above, second respondent shall pass final orders after



W.P.No.7543 of 2023

WEB COPY

considering the representation. To be noted, this is vide proviso to Section 28(2)(ii) of Amended Highways Act;

(iv) Final orders so passed shall be served on the writ petitioners within five working days from the date of the final orders;

(v) If the final orders to be passed by second respondent end up in favour of the writ petitioners, that would be curtains on the matter;

(vi) If it happens to the contrary, in other words, if the final orders to be passed by second respondent are going to be adverse to the writ petitioners, the same shall be kept in abeyance for a fortnight from the date of service of the final orders on the writ petitioners so as to provide a window to the writ petitioners to assail the said orders if permissible in law or to seek judicial review of the said orders;

(vii) If the writ petitioners do not take recourse to either of the aforesaid two options within a fortnight from the date of service of the final orders, the final orders to be passed by



W.P.No.7543 of 2023

WEB COPY

second respondent will be resuscitated and put into motion;

(viii) 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 second respondent under proviso to Section 28(2)(ii) of Amended Highways Act; and

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

8. The prayer in the captioned WP is very expansive.

9. In and vide certiorari limb of prayer, aforementioned 06.12.2022 notice purportedly issued under Section 28(2)(ii) of Highways Act has been assailed and the same has been dealt with supra.

10. As regards the mandamus limb, the question turns on an order to be made by Administrator vide proviso to Section 28(2)(ii) of Amended Highways Act. Only in the event of said land being found to be private land and State still be interested in acquiring the same, the question of



W.P.No.7543 of 2023

compensation arises. Therefore, we refrain from issuing any orders regarding the compensation i.e., mandamus limb but we make it clear that if conclusion of the Administrator vide proviso to Section 28(2)(ii) of Amended Highways Act is to the effect that said land is private land, or if the conclusion arrived at by the Administrator that the said land is not private land is dislodged and said land is held to be private land and if the State is still interested in acquiring the said land, the question of compensation will be considered under appropriate / applicable statute.

Captioned WP is disposed of in the aforesaid manner. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

(M.S.J.,)

(H.C.J.,)

19.08.2025

Index : Yes / No

Neutral Citation : Yes / No

Speaking / Non-speaking

mk

Page Nos.8/10



W.P.No.7543 of 2023

WEB COPY

To

1. The Divisional Engineer
Tamil Nadu Highways Development Scheme-II
Kancheepuram
Opposite District Collectorate
Kancheepuram District.
2. The Assistant Divisional Engineer
Construction and Maintenance
Highways Department
Chengalpattu
Chengalpattu District.



WEB COPY



W.P.No.7543 of 2023

**M.SUNDAR, J.,
and
HEMANT CHANDANGOUDAR, J.,**

mk

W.P.No.7543 of 2023

19.08.2025

Page Nos.10/10