



W.P.No.11336 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2025

CORAM

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

and

THE HONOURABLE MR.JUSTICE **HEMANT CHANDANGOUDAR**

W.P.No.11336 of 2023

and

W.M.P. No.11231 of 2023 in W.P. No.11336 of 2023

R.Manoharan

... Petitioner

Vs.

- 1.The District Collector,
Tiruvannamalai,
Tiruvannamalai District.
- 2.The District Registrar Office,
Tiruvannamalai,
Tiruvannamalai District.
- 3.The Revenue District Office,
Kalasapakkam,
Tiruvannamalai District.
- 4.The Tahsildar,
Kalasapakkam,
Tiruvannamalai District.
- 5.The Divisional Engineer,
State Highways,
Operation and Maintenance,
Tiruvannamalai.



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6.The Assistant Divisional Engineer,
State Highways,
Operation and Maintenance,
Polur, Tiruvannamalai.

.. Respondents

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records of the impugned show cause notice in Memo No.58/2023/encroachment/U dated 18.03.2023 on the file of the sixth respondent and quash the same.

For Petitioner : Mr.R.Rajarajan

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 18.03.2023 issued by R6 [Assistant Divisional Engineer, State Highways, Operation and Maintenance, Polur, Tiruvannamalai]' {hereinafter 'impugned order' for the sake of brevity, convenience and clarity}.



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2. Adverting to the impugned notice, Mr.R.Rajarajan, learned counsel for the writ petitioner, submitted that the impugned notice has been issued under Section 28 of 'The Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)' {hereinafter 'said 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 fifteen days, is learned counsel's say.

3. Issue notice. Mr.T.K.Saravanan, learned Additional Government Pleader accepts notice for all six respondents.

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 said Act in its entirety and the same reads as follows:



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'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.

(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



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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)

6. A careful perusal of Section 28 of said 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 (SCN), the impugned notice issued by R6 directly states that in the event of failure of removal of encroachment by writ petitioner, encroachment will be removed.

7. It is also seen that the writ petitioner has responded to the impugned notice *vide* his detailed response dated 26.03.2023, a scanned reproduction of which is as follows:



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OBJECTIONS TO SHOW CAUSE NOTICE DATED 18.03.2023

bs

26.03.2023

From,

1. R. Manoharan
S/o. Ramaswamy,
2. M.Vasantha,
W/o R.Manoharan,
3. M.Elanchezhien.
S/o r.Manoharan,
4. M.Elavarasan,
S/o R.Manoharan,
Perayampattu village,
Poondy Post,
Kalasapakkam Taluk,
Tiruvannamalai District.

To,

1. The Divisional Engineer,
State Highways,
Operation and Maintenance,
Tiruvannamalai.
2. The Assistant Divisional Engineer,
State Highways,
Operation and Maintenance,
Polur,
Tiruvannamalai.
3. The Assistant Engineer.
State High ways.
Kalasapakkam.



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Sir,

Sub-Objections-Show cause notice date 18/03/2023-reg.

1. We respectfully submit that the property admeasuring 35.50 Ares comprised in Sy. No. 82A/4 situated at Perayampattu village, Kalasapakkam Taluk, Tiruvannamalai District along with the various other properties are ancestrally and jointly belonging to the 1st petitioner and his brother Ilanchezhiyan. By virtue of registered partition deed dtd. 05/06/1990 took place between the petitioner and his brother Ilanchezhiyan, the property admeasuring 35.50 Ares comprised in Sy. No. 82A/4 was allotted to the share of petitioner. Since then, the petitioner is in possession and enjoyment of the aforementioned property and the revenue records are also standing in his name.

2. The property admeasuring 1.07 Ares comprised in Sy. No. 92 is the government porampoke land. The said government porampoke land is situated on the eastern side of the petitioner's private property comprised in Sy. No. 82A/4. While that being so, the petitioner after obtaining appropriate permission from the concerned authorities had constructed a marriage hall in the property admeasuring Sy. No. 82A/4 including 7 ares comprised in Sy. No. 92 which is admittedly a government porampoke land. For more than three decades, the petitioner continued to be in possession and enjoyment of the same. The marriage hall belonging to the petitioner is also utilized by the government for using the same as go down for distribution of fan, mixer, grinder which were freely distributed to the public. **Subsequently in the year 2017, the petitioner had closed the marriage hall and converted the same as a residential**

26/3/2023



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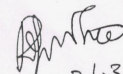
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building and paying the property tax receipts in his own name and the name of his son. Since 2017, the petitioner is using the buildings comprised in Sy. No. 82A/4 and Sy. No. 92 more fully described supra only for his residential purpose. The petitioner is aged about 70 years and is residing in the said house with his wife.

4. I respectfully submit that due to the enmity and ill will, some of the private persons had given a false complaint and attempted to destroy and demolish the building situated in S.No.92, at Perayampattu village, Kalasapakkam Taluk, Tiruvannamalai District in illegal manner. Therefore, the petitioner has filed a civil suit for permanent injunction against the statutory Respondents in OS. No. 3/2022 on the file of District Munsiff Court, ^{Kalasapakkam} ~~Pohur~~, which is still pending. While that being so, the petitioner had also given a representation dated.27.02.2023 to the Revenue authorities and requested them to assign the land admeasuring 7 ares comprised in S.No.92, at Perayampattu village, Kalasapakkam Taluk, Tiruvannamalai District after receiving the market value for the property and to issue patta in the name of the petitioner. In this regard the first petitioner had also filed the writ petition in WP.No.8637/2023 and the same was also disposed of directing the revenue authorities to consider the representation for grant of patta after receiving the marker value of the property by order dated 20/03/2023. The said application for assignment and grant of patta is pending consideration before the revenue authorities.

5. I further state that S.No.92 is defined as pattai and thar salai in the A Register extract. To the knowledge of the petitioner, the said s.No.92 still vest with the Panchayat and the same is also not declared as Highways

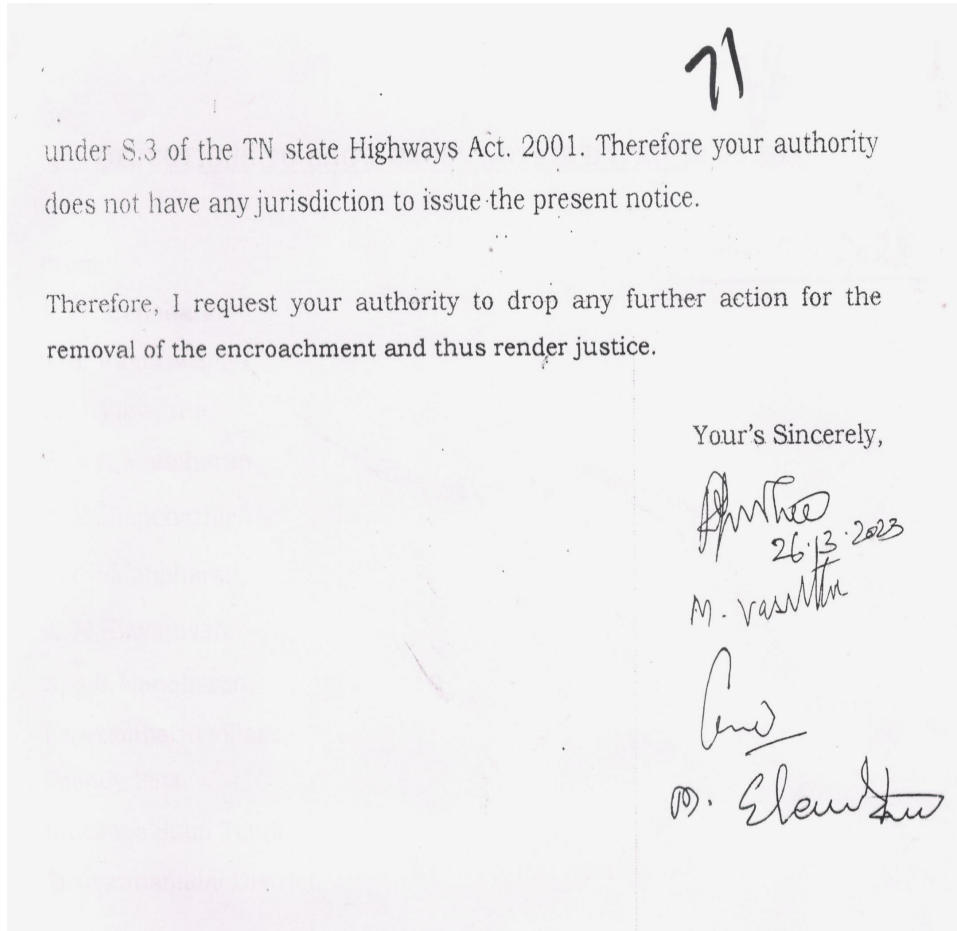

26.3.2023



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

- i. Impugned notice shall be treated as a show cause notice (SCN) served on the writ petitioner today and the writ petitioner's representation dated 26.03.2023 in response to the impugned notice which is now directed to be treated as SCN, shall be considered on its own merits and in



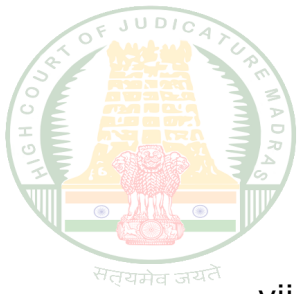
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accordance with law by R6 and final orders shall be passed by R6 in accordance with proviso to Section 28(2)(ii) of said Act;

- ii. Final order so passed shall be served on the writ petitioner within five working days from the date of the final order;
- iii. If the final order to be passed by R6 ends up in favour of the writ petitioner, that would be curtains on the matter;
- iv. If it happens to the contrary, in other words, if the final order to be passed by R6 is going to be adverse to the writ petitioner, the same shall be kept in abeyance for a fortnight from the date of service of the final order on the writ petitioner so as to provide a window to the writ petitioner to assail the said order if permissible in law or to seek judicial review of the said order;
- v. If the writ petitioner does not take recourse to either of the aforesaid two options within a fortnight from the date of service of the final order, the final order to be passed by R6 will be resuscitated and put into motion;
- vi. 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 R6 under proviso to Section 28(2)(ii) of said Act; and



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vii. We also make it clear (though obvious) that we have not expressed any view or opinion on the merits of the matter and therefore, R6, while passing final order, shall do so untrammelled by the observations made in this order.

9. Captioned WP stands disposed of with the aforementioned observations and directives in the aforesaid manner. Consequently, captioned Writ Miscellaneous Petition (WMP) stands disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (H.C.,J.)
30.06.2025

Index : Yes / No
Neutral Citation : Yes / No
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3. The Revenue District Office,
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4.The Tahsildar,
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**M.SUNDAR, J.,
and
HEMANT CHANDANGOUDAR, J.,**

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