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W.P. No.12764 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2025

CORAM:

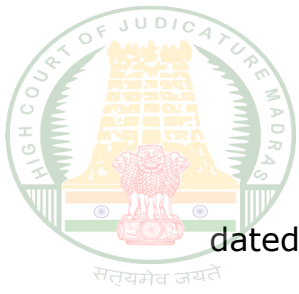
THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

W.P. No.12764 of 2025 and W.M.P.No.14334 of 2025

- | | | |
|----|---|-------------|
| 1. | Palanisamy | |
| 2. | Deivathal | Petitioners |
| | vs. | |
| 1. | The Divisional Engineer
Construction & Maintenance
Highways Department
College Road
Tiruppur District | |
| 2. | The Assistant Divisional Engineer
Construction and Maintenance
Highways Department
Palladam
Tiruppur District | |
| 3. | The Assistant Engineer
Construction and Maintenance
Highways Department
Palladam
Tiruppur District | |
| 4. | Anbarasu | Respondents |

Writ Petition filed under Article 226 of the Constitution of India
seeking a writ of certiorari to call for the records of impugned order

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dated 12.03.2025 *vide* proceedings in Ka.No.Manu/2025/Uu on the file
of the second respondent and quash the same.

For petitioner Mr. K. Myilsamy

For RR 1 to 3 Mr. V. Ravi

ORDER

[made by M. SUNDAR, J.]

Captioned main 'writ petition' (hereinafter 'WP' for the sake of brevity) has been preferred seeking a writ of certiorari *qua* a letter dated 12.03.2025 bearing reference Ka.No.Manu/2025/Uu issued by R2 (Assistant Divisional Engineer) {hereinafter 'impugned letter' for the sake of convenience and clarity}. In and *vide* impugned letter, the writ petitioners have been directed to remove alleged encroachment made by them in land belonging to Highways Department, within a week.

2. Mr. K. Myilsamy, learned counsel on record for writ petitioners, submitted that the impugned letter straightaway calls upon writ petitioners to remove the alleged encroachment without show causing them.

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3. Issue notice to RR 1 to 3 (official respondents). Notice to R4 is dispensed with inasmuch as this order will not touch upon the rights of R4 much less be prejudicial to the interest of R4. On the contrary, rights of R4 will stand preserved as would be set out elsewhere *infra* in this order.

4. Mr. V. Ravi, learned Special Government Pleader, accepts notice for RR 1 to 3 and submits that the writ petitioners have encroached upon the land belonging to the Highways Department and that has necessitated the impugned letter.

5. From a perusal of the impugned letter, it is evident that pursuant to the complaint made by R4 (private respondent) stating that the writ petitioners have encroached upon land belonging to the Highways Department, *vide* the impugned letter, the writ petitioners have been directed to remove the alleged encroachment made by them within seven days. Further, in the impugned letter, there is no reference to any provision of law under which the same has been made.

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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--

(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 ease of reference)



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7. A careful perusal of Section 28 of said Act brings to light that the writ petitioners 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 noticees/writ petitioners, the authority/officer concerned should pass 'final orders'. In the case on hand, it is not even the case of learned State counsel that there is Section 28(2)(ii) adherence.

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

(i) impugned letter *i.e.*, letter dated 12.03.2025, issued by R2 shall now be treated as an SCN within the meaning of Section 28(2)(ii) of said Act; (To be noted, a scanned reproduction of impugned letter is as follows):



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உதவிக்க கோட்டப் பொறியாளர் அலுவலகம்
நெடுஞ்சாலை க(ம)ப, பல்லடம்.

க.எண்.மனு/2025/உ./நாள் : 12.03.2025

பொருள் : திருப்பூர் (நெ) க(ம)ப கோட்டம் - பல்லடம் (நெ) க(ம)ப, உட்கோட்டம் - பல்லடம் (நெ) க(ம)ப பிரிவு - வாவிபாளையம் கிராமம் க.ச.எண்.28 நெடுஞ்சாலைத்துறைக்கு சொந்தமான நிலத்தை ஆக்கிரமிப்பு செய்ததாக பெறப்பட்ட புகார் மனு - நெடுஞ்சாலைத்துறையின் எல்லையை அளவிடு செய்வது - தொடர்பாக.

பார்வை : திரு.பா.அன்பரசு, கோட்டபாளையம், பல்லடம் அவர்களின் கடித நாள் : 01.11.2022.

பார்வையில் காணும் மனுவில் திரு.பா.அன்பரசு, கோட்டபாளையம், பல்லடம் அவர்கள் வாவிபாளையம் கிராமம் க.ச.எண்.28-ல் எலவந்தியை சேர்ந்த திரு.பழனிச்சாமி மற்றும் திருமதி.தெய்வத்தாள் ஆகியோர் நெடுஞ்சாலைத் துறைக்கு சொந்தமான நிலத்தை ஆக்கிரமிப்பு செய்து கம்பி வேலி அமைத்துள்ளதாகவும் மேலும், நெடுஞ்சாலைத்துறைக்கு சொந்தமான அரசு நிலத்தை மீட்க வேண்டும் என்றும் மனு அளித்துள்ளார்.

சம்பந்தப்பட்ட இடத்தை தள ஆய்வு செய்ததில் பல்லடம் (நெ) க(ம)ப உட்கோட்டப். பராமரிப்பில் உள்ள இதர மாவட்ட சாலையான கள்ளிப்பாளையம் - வாவிபாளையம் சாலையில் கி.மீ.3/10 க.ச.28 உள்ளது. இதனை பல்லடம் வருவாய்துறையினர் மூலம் 06.03.2025 அன்று சம்பந்தப்பட்ட நிலத்தினை (வாவிபாளையம் கிராமம் க.ச.எண்.28 புல எண்) அளவிடு செய்யப்பட்டது. அதில் நெடுஞ்சாலைத்துறைக்கு உரிய நிலம் க.ச.எண்.28-ல் 97மீ நீளத்திற்கு ஒருபுறம் 4.50 மீட்டரும், மறுபுறம் 3.40 மீட்டர் அகலத்தில் நெடுஞ்சாலைத்துறை இடத்தை ஆக்கிரமித்து தங்களால் கம்பி வேலி அமைக்கப்பட்டுள்ளது. எனவே, ஆக்கிரமிக்கப்பட்டுள்ள பகுதியை இக்கடிதம் கண்ட 7 தினங்களுக்குள் தாங்களாகவே முன்வந்து அகற்றிக் கொள்ளுமாறு கேட்டுக் கொள்ளப்படுகிறது. தவறும் பட்சத்தில் நெடுஞ்சாலைத்துறையினர் மூலம் அகற்றப்பட்டு அதற்கான செலவினம் தங்களிடம் வசூலிக்கப்படும் என்பதையும் தெரிவித்துக் கொள்ளப்படுகிறது.

பெற்றனர் : திரு.கே.பழனிச்சாமி,
மலையப்பன் கோட்டம்,
கோட்டப் பாளையம்,
நாதகவுண்டிப்பாளையம் அஞ்சல்,
பல்லடம் வட்டம்,
திருப்பூர் மாவட்டம்.

நகல் : உதவிப் பொறியாளர் (நெ) க(ம)ப பல்லடம்

உதவிக்க கோட்டப் பொறியாளர்,
நெடுஞ்சாலை, க(ம)ப, பல்லடம்.

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(ii) SCN would be construed to have been served on the writ petitioners today (09.04.2025);

(iii) Therefore, writ petitioners 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 16.04.2025;

(iv) R1 shall consider the representation/response of writ petitioners and pass 'final orders' in accordance with proviso to Section 28(2)(ii) of said Act;



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(v) If the writ petitioners do not send a representation/response within seven days, as above, it is open to R1 to proceed pursuant to impugned letter which is now being treated as SCN *vide* instant order;

(vi) Final orders to be made by R1 under proviso to Section 28(2)(ii) shall be duly served on the writ petitioners with due acknowledgment within three working days from the date of the order and all rights and contentions of writ petitioners are preserved with regard to challenge to such an order, if it is adverse to the writ petitioners;

(vii) since the impugned letter is at the instance of R4 (private respondent), rights and contentions of R4 also stand preserved; and

(viii) Though obvious, we make it clear that coercive action (if any) shall be subject to and depending on 'final orders' to be made by R1.



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9. 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.)
09.04.2025

cad
Index : Yes/No
NC : Yes/No



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To:

1. The Divisional Engineer
Construction & Maintenance
Highways Department
College Road
Tiruppur District
2. The Assistant Divisional Engineer
Construction and Maintenance
Highways Department
Palladam
Tiruppur District
3. The Assistant Engineer
Construction and Maintenance
Highways Department
Palladam
Tiruppur District



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M.SUNDAR, J.

and

K. GOVINDARAJAN THILAKAVADI, J.

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09.04.2025

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