



W.P. No.13698 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2025

CORAM:

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

W.P. No.13698 of 2025 and W.M.P. No.15395 of 2025

Roja Amma

Petitioner

vs.

1. The Secretary to the Government
Highways and Minor Ports (HP1) Department
Secretariat, Fort St. George
Chennai 600 009
2. The District Collector/Appellate Authority
Chennai District, Singaravellar Maligai
Rajaji Salai, Chennai 600 001
3. The Assistant Executive Engineer
Public Works Department
Coovam Drainage Subdivision
Chepauk, Chennai 600 005
4. The Assistant Divisional Engineer (Highways)
Office of Assistant Divisional Engineer (Highways)
Chennai Metropolitan Development Scheme
Division 4, Sub-Division 9
Alandur, Chennai 600 016
5. The Divisional Engineer (Highways)
Office of Divisional Engineer (Highways)
Chennai Metropolitan Development Scheme
Division 4, Sub-Division 9
Alandur, Chennai 600 016

Respondents



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Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records relating to the fourth respondent's letter No.120/2014/Padikuppam/ADE/Date: 05.03.2025 and 5th respondent's consequential eviction Notice No.1/Padikuppam/2025/E.V.A/dated 07.03.2025 and quash the same.

For petitioner Mr. K. Sakthivel

For respondents Mr. V. Ravi
Special Government Pleader

ORDER

[made by K. GOVINDARAJAN THILAKAVADI, J.]

This writ petition is directed against the letter dated 05.03.2025 addressed by the fourth respondent (Assistant Divisional Engineer-Highways) and the notice dated 07.03.2025 issued by the fifth respondent (Divisional Engineer-Highways), both to the writ petitioner.

2. The facts which gave rise to this writ petition and which are necessary for deciding this writ petition are as follows:

2.1. The petitioner, a septuagenarian, claims that her son was the owner of the land and building at Door No.48, 48/1, 49 and 50, Amman Street, Rail Nagar, Mettukulam, Koyambedu, Chennai,



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comprised in old Survey No.155/1 Part, new T.S. Nos.5,6,7 and 8, Block No.34, Koyambedu Village, now Aminjikarai Taluk, Chennai District.

2.2. According to the writ petitioner, patta was issued for the aforesaid properties in favour of her son and after his demise, she has inherited the aforesaid properties and she has been in possession and enjoyment of the same.

2.3. It is the case of the writ petitioner that on 22.01.2019, three notices (in respect of three door numbers, viz., Door Nos.48, 48/1 and 49) issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, (for short "the 1905 Act") were issued stating that the aforesaid properties are a part of the Coovam River and hence, she should vacate the same.

2.4. Since notices under Section 7 of the 1905 Act did not precede the aforesaid notices dated 22.01.2019, the writ petitioner preferred W.P.Nos.4016, 4017 and 4021 of 2019 assailing the notices dated 22.01.2019 which were disposed of by a Coordinate Bench of



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this Court *vide* common order dated 21.03.2019, the operative portion of which reads as follows:

"5. In view of the fact that the petitioner is impugning the notices issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, the petitioner has a remedy of appeal under Section 10 of the said Act. As the petitioner has efficacious alternate remedy of preferring appeals under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, we are not inclined to interfere with the impugned notices and the petitioner is relegated to the remedy of preferring appeals.

6. The writ petitions are disposed of with the above observation. No costs. Consequently, W.M.P. Nos.4468, 4469 and 4471 of 2019 are closed."

2.5. Pursuant to the aforesaid common order, the writ petitioner preferred an appeal dated 27.03.2019 along with a stay petition before the second respondent (District Collector) under Section 10 of the 1905 Act. Pending the said appeal, on 28.11.2020, four demolition notices were issued by the third respondent (Assistant Executive Engineer, Public Works Department) fixing the date of demolition as 30.11.2020.

2.6. Thereagainst, the writ petitioner preferred four writ petitions being W.P.Nos.19146, 19149, 19151 and 19153 of 2020. In the said writ petitions, the writ petitioner sought a further relief of a direction for disposal of her appeal under Section 10 of the 1905 Act.



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2.7. The said batch of four writ petitions was disposed of by a

Coordinate Bench of this Court *vide* a common order dated

16.12.2020, the relevant portion of which reads as follows:

“6. A perusal and consideration of the arguments advanced by the learned counsel appearing for the petitioner, coupled with the materials available on record, would prima facie disclose that there is no proof as to the filing and entertainability of the appeal, however, the learned counsel appearing for the petitioner, on instructions, would submit that the appeal has been filed and the same has been entertained. This Court, taking note of the above facts and circumstances, without going into the merits of the claim as projected by the petitioner either in the appeal dated 27.03.2019 or in the present writ petition, directs the first respondent to entertain the appeal filed by the petitioner, if the papers are otherwise in order, and take up the petition for stay at the first instance and give a disposal, on merits and in accordance with law, within a period of two weeks from the date of receipt of a copy of this order/uploading of this order in the website, and till such time, the second respondent shall defer further decision in terms of the impugned notice. It is made clear that the petitioner, till the disposal of the appeal by the first respondent, shall not create any third party right in respect of the land and superstructures in question.”

2.8. When things stood thus, the fourth respondent issued a notice dated 17.12.2024 directing the writ petitioner to remove alleged encroachments within a fortnight since the lands in question were required for construction of a high level bridge across Coovam River at Padikuppam in lieu of existing Bed Level Causeway connecting Padikuppam and Poonamallee High Road. Seemingly, this notice was



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issued straightaway without issuing a show cause notice.

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2.9. It is worth pointing out that the notice dated 17.12.2024 was bereft of details as to where exactly the alleged encroachments had been made by the writ petitioner. In other words, it did not even contain the survey number wherein the alleged encroachments had been made by the writ petitioner. Further, it was also not stated as to on what basis, the land in question was sought to be transferred to the Highways Department.

2.10. Be that as it may, challenging the aforesaid notice dated 17.12.2024, the writ petitioner preferred W.P.No.412 of 2025 which was disposed of by a Coordinate Bench of this Court in which one of us (M. SUNDAR, J.) was a Member *vide* order dated 08.01.2025 on the following terms:

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

i. The impugned notice being notice dated 17.12.2024 bearing reference அறிவிப்பு எண் 3/பாடிசூப்பம்/2024/உ.கோ.பொ issued by R3 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 15.01.2025 (if so advised and if so desired);

iii. If the writ petitioner sends such a



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representation, the same shall be considered on its own merits and in accordance with law by R3 and final orders shall be passed by R3 in accordance with the proviso to Section 28(2)(ii) of said Act;

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

v. Though obvious, any further action *qua* removal of encroachment will be subject to / depending on final orders to be passed by R3 under proviso to Section 28(2)(ii) of said Act and the proceedings under said 1905 Act; and

vi. We also make it clear (though obvious) that we have not expressed any view or opinion on the merits of the matter, much less on the merits of the proceedings under said 1905 Act which are said to be pending. Let the proceedings under said 1905 Act continue on its own merits and in accordance with law.

13. Captioned main WP is disposed of in the aforesaid manner. Consequently, captioned WMP thereat is disposed of as closed. There shall be no order as to costs."

2.11. After the aforesaid order dated 08.01.2025, the writ petitioner addressed two representations dated 09.01.2025 and 03.02.2025 to the third respondent. However, notwithstanding the same, the fourth respondent issued a letter dated 05.03.2025 stating *inter alia* that the alleged encroachments made by the writ petitioner in the Coovam River should be removed and two days later, *i.e.*, on 07.03.2025, the fifth respondent (Divisional Engineer – Highways)



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issued a notice *inter alia* requiring the writ petitioner to remove the encroachments made near Padikuppam in Koyambedu, Aminjikarai Taluk, Chennai District, within a fortnight.

2.12. Challenging the aforesaid letter dated 05.03.2025 and notice dated 07.03.2025, the present writ petition has been filed as stated in the opening paragraph.

3. Issue notice to the respondents.

4. Mr. V. Ravi, learned Special Government Pleader, accepts notice for all five respondents and fairly concedes that the impugned letter and notice do not contain the survey numbers in which the alleged encroachments have been made.

5. From the aforesaid summation of facts, it is seen that this is the fourth round of litigation by the writ petitioner. It is also pertinent to note that Section 28 (2)(ii) of the Tamil Nadu Highways Act, 2001 (for short "the Highways Act") prescribes for removal of encroachment made in the Highway or in any area vested with the



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Government under the said Act, only after issuance of a show cause notice returnable within a period of seven days. Further, the proviso to Section 28(2)(ii) states in clear terms that final orders shall be passed only after considering the response to the show cause notice.

6. Thus, when the statute is very clear as to the manner of removal of encroachment, the impugned letter and impugned notice ought to have contained the exact survey numbers wherein alleged encroachments have been made by the writ petitioner, thereby, enabling her to submit her response effectively.

7. Hence, on the aforesaid solitary ground, the impugned letter and impugned notice are set aside by recording the stated position of the learned Special Government Pleader that the impugned letter and notice do not contain the survey numbers where the alleged encroachments have been made by the writ petitioner.

8. The following order is made:

- i. The appropriate authority shall issue a notice clearly mentioning the survey number wherein the alleged



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encroachments are made;

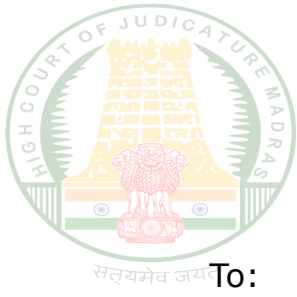
- ii. If the encroachments are found in the land belonging to the Highways Department, final orders shall be passed in accordance with proviso to Section 28(2)(ii) of the Highways Act; and
- iii. Contrarily, if the encroachments are found in the land vested with the Government, appropriate action shall be commenced under the appropriate/applicable statute.

This writ petition stands disposed of on the aforesaid terms.

Connected W.M.P. stands closed. There shall be no order as to costs.

(M.S., J.) (K.G.T., J.)
22.04.2025

cad	
Index	: Yes/No
NC	: Yes/No



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To:

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