



W.P.No.13779 of 2022 etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2025

CORAM

THE HONOURABLE MR. JUSTICE M.SUNDAR

and

THE HONOURABLE MR. JUSTICE HEMANT CHANDANGOUDAR

WP Nos.13779,13782,14059,14062,14064,14066,14069,14060,
14067,14068,14072,14077,14083,14087,14089,14090 and
14093/2022 (17 WPs)

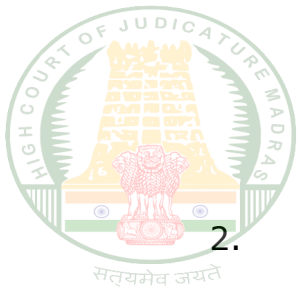
and

W.M.P. Nos.13075,13077,13300,13303,13305, 13306, 13307, 13302,
13308, 13313, 13311, 13314, 13317, 13319, 13320,13321 and
13324/2022 (17 WMPs)

A. Venkatachalam	Petitioner in WP No.13779 of 2022
S. Thangavel	Petitioner in WP No.13782 of 2022
M. Hitlar	Petitioner in WP No.14059 of 2022
K. Kumar	Petitioner in WP No.14062 of 2022
Karuppannan Kariyagounder	Petitioner in WP No.14064 of 2022
Thangavel Periyanna Nadar	Petitioner in WP No.14066 of 2022
Periyasamy Perumal	Petitioner in WP No.14069 of 2022
A. Venkatachalam	Petitioner in WP No.14060 of 2022
Karthick	Petitioner in WP No.14067 of 2022
V. Sasikala	Petitioner in WP No.14068 of 2022
A. Karuppannan	Petitioner in WP No.14072 of 2022
S. Govindan	Petitioner in WP No.14077 of 2022
Govintharaj Karuppannan	Petitioner in WP No.14083 of 2022
Sivakumar Thangarasu	Petitioner in WP No.14087 of 2022
P. Palanisamy	Petitioner in WP No.14089 of 2022
Natesan Sepperumal Padaiyachi	Petitioner in WP No.14090 of 2022
G. Mahalingam	Petitioner in WP No.14093 of 2022

vs.

1. State of Tamil Nadu
represented by its Secretary
Highways Department
Fort St. George
Chennai 600 009



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2. The District Collector
Salem District
Salem
3. The Divisional Engineer
Highways Department
Salem
4. The Assistant Divisional Engineer
Highways Department
Vazhappadi
Salem District

Respondents in all WPs

Writ Petitions filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records of the fourth respondent in issuance of notice in ref. Na.Ka.No. ஆக்கிரமிப்பு dated 23.05.2022 and quash the same and direct the third respondent, the authority competent under the Highways Act, if he chooses to proceed further to comply with the provisions of Highways Act by affording an opportunity of being heard.

For petitioner in
all WPs

Mr. Aditya Sarangarajan
for Ms. S. Shanmitha

For respondents in
all WPs

Mr. T.K. Saravanan
Addl. Govt. Pleader

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COMMON ORDER

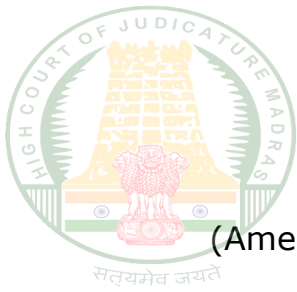
[made by M.SUNDAR, J.]

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Captioned main 'writ petitions' [hereinafter 'WPs' for the sake of brevity] have been filed *inter alia* assailing 'separate orders dated 23.05.2022 issued by R4 (Assistant Divisional Engineer, Highways Department, Vazhappadi, Salem District)' [hereinafter 'impugned orders' for the sake of brevity, convenience and clarity].

2. Mr. Aditya Sarangarajan, learned counsel representing Ms.S. Shanmitha, learned counsel on record for writ petitioners and Mr. T.K. Saravanan, learned Additional Government Pleader for respondents, are before us.

3. Learned counsel for writ petitioners submitted that R4 is not competent to issue the impugned notices. To put it differently, learned counsel raised a jurisdictional issue. This takes us to Section 28 of 'the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)' (hereinafter 'said Act' for the sake of convenience and clarity). The said Act kicked in on 13.11.2000 and Section 28 of said Act was amended on and from 07.03.2024 *vide* 'the Tamil Nadu Highways



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(Amendment) Act, 2024 (Act 11 of 2024)' [hereinafter 'the Amending Act' for the sake of convenience and clarity].

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4. Section 28, prior to 07.03.2024, read 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 the sake of specificity)

5. Post amendment *vide* said Amending Act, Section 28 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



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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 the amendment brought in to Section 28, brings to light that the expression / term 'Highways authority' has been substituted with the term 'Administrator'.

7. The expression 'Highways authority' is a defined term *qua* said Act *vide* Section 2(13) prior to 07.03.2024 and post 07.03.2024, Section 2(13) has also been amended. Section 2(13) prior 07.03.2024 read as follows:



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'2. Definitions.-- In this Act, unless the context otherwise requires, --

- (1)
- (2)
- (3)
- (4)
- (5)
- (6)
- (7)
- (8)
- (9)
- (10)
- (11)
- (12)

(13) "Highways Authority" means the officer appointed under sub-section (2) of Section 5;

8. Section 2(13), post 07.03.2024, reads as follows:

'2. Definitions.-- In this Act, unless the context otherwise requires, --

- (1)
- (2)
- (3)
- (4)
- (5)
- (6)
- (7)
- (8)
- (9)
- (10)
- (11)
- (12)

(13) "Administrator" means the officer appointed under sub-section (2) of Section 5;'



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9. The above makes it clear that whether it is 'Highways authority' or 'Administrator', legally speaking, it converges in Section 5(2).

10. Section 5 (2), prior to 07.03.2024, read as under:

'5. Appointment of Highways Authorities.-- (1)

(2) The Divisional Engineer, Highways Department of the Government in-charge of each division, shall be the Highways Authority for that division.'

11. Section 5 (2), post 07.03.2024, reads as under:

'5. Appointment of Administrators.-- (1)

(2) The Divisional Engineer, Highways Department of the Government in-charge of each division, shall be the Administrator for that division.'

12. The above makes it clear that the mechanism/machinery put in place *vide* Section 28 for removal of encroachments remains the same as regards the said Act and it is only the nomenclature of the authority has changed. There may be some other consequential amendments but it is not necessary to dilate into the same or dwell on the same as that would be outside the remit of the captioned 17 WPs.

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13. Reverting to the jurisdictional issue raised by learned counsel for writ petitioners, we deem it appropriate to refer to sub paragraph (j) of paragraph 3 found at page no.8 of counter affidavit of R4 which reads as follows:

'(j) Under Section 28(2) of the Highways Act, the 4th respondent, Assistant Divisional Engineer (H) C & M Highways, Vazhappadi is the Highways Authority to issue the notice within his jurisdiction. The Divisional Engineer (C & M), Highways, Salem-4 has authorised the 4th respondent to take appropriate action in this regard and submit the report *vide* Letter No.2636/2015/A3 dated 23.01.2022. By misconception of Highways Rules in force, the allegations were made.'

14. In our considered opinion, the aforesaid stated position of R4 douses the jurisdictional issue as Section 28 makes it clear that a notice under Section 28 can be issued either by 'Highways authority/Administrator' or 'by any person authorised by Highways authority/Administrator'. R4 now qualifies as 'a person authorised by Highways authority'. We are acutely conscious that the impugned orders dated 23.05.2002 which is prior to the date on which the said Amending Act kicked in. Therefore, we are dealing with 'Highways authority' rather than 'Administrator'. Nonetheless, for the sake of specificity, we have clarified the obtaining legal position.



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15. Adverting to the impugned orders, learned counsel for the writ petitioners, submitted that the impugned orders have been issued under Section 28 of the said Act but they have not called upon the writ petitioners to show cause in seven days. On the contrary, they straightaway calls upon the writ petitioners to remove alleged encroachment within seven days, is learned counsel's further say.

16. The scope of captioned main WPs is substantially narrow, legal drill on hand is very limited and therefore, with the consent of learned counsel on both sides, main WPs are taken up for final disposal.

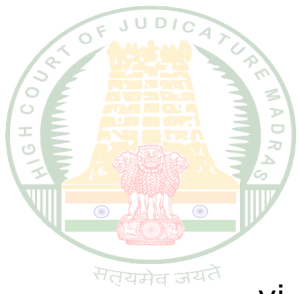
17. A careful perusal of Section 28 of said Act brings to light that we are concerned with Section 28(2)(ii) and the proviso thereat as this provision provides for an alleged encroacher being show caused before calling upon the alleged encroacher to remove the encroachment, if any. In the cases on hand, without issuing show cause notices (SCNs), the impugned orders passed by R4 directly state that in the event of failure of removal of encroachments by writ petitioners, encroachments will be removed.



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18. In view of admitted noncompliance of proviso to Section 28(2)(ii) of said Act in the cases on hand, in order to secure the ends of justice, the following order is made:

- i. Impugned orders are not set aside but impugned orders shall be treated as SCNs served on the writ petitioners today *i.e.*, 03.07.2025;
- ii. The above means that the writ petitioners/noticees can send their responses/ representations to SCNs within 7 days from today *i.e.*, on or before 10.07.2025;
- iii. On writ petitioners sending such responses/representations within the aforementioned timeline, the same shall be considered on their own merits and in accordance with law by authorised person concerned and final orders shall be passed by authorised person concerned in accordance with proviso to Section 28(2)(ii) of the said Act;
- iv. Final orders so passed shall be served on the writ petitioners within a period of five working days from the date of the final orders;
- v. If the final orders to be passed by authorised person concerned end up in favour of the writ petitioners, that would be curtains on the matter;



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- vi. If it happens to the contrary, in other words, if the final orders to be passed by authorised person concerned 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 order;
- 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 so passed by authorised officer concerned will be resuscitated and put into motion;
- viii. Though obvious, we make it clear that any further coercive action *qua* removal of encroachments will be subject to / depending on final orders to be passed by authorised person concerned under proviso to Section 28(2)(ii) of the said Act; and
- ix. We also make it clear (though obvious) that we have not expressed any view or opinion on the merits of the matter and therefore, authorised person concerned, while passing final orders, shall do so untrammelled by the observations made in this order.



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19. Captioned WPs stand disposed of with the aforementioned observations and directives in the aforesaid manner. Consequently, captioned writ miscellaneous petitions stand disposed of as closed. There shall be no order as to costs.

20. As regards W.P. Nos.13779 and 13782 of 2022, the same were directed to be listed along with W.P.No.14002 of 2022 filed by one K. Gunasekaran *vide* order dated 02.06.2022 made by another Hon'ble Division Bench. De-tag W.P.No.14002 of 2022 and list W.P.No.14002 of 2022 separately (To be noted, W.P.No. 14002 of 2022 is de-tagged at the request of the learned counsel on either side). List W.P.No.14002 of 2022 one week hence, *i.e.*, on 10.07.2025.

[M.S., J.] [H.C., J.]
03.07.2025

cad
Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes



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To:

1. The Secretary
Highways Department
Government of Tamil Nadu
Fort St. George
Chennai 600 009
2. The District Collector
Salem District
Salem
3. The Divisional Engineer
Highways Department
Salem
4. The Assistant Divisional Engineer
Highways Department
Vahappadi
Salem District



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and

HEMANT CHANDANGOUDAR, J.

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14062,14064,14066,14069,14060,
14067,14068,14072,14077,14083,
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(17 WPs)

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