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W.P.No.17475 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2025

CORAM

THE HONOURABLE MR. JUSTICE M.SUNDAR

and

THE HONOURABLE MR. JUSTICE HEMANT CHANDANGOUDAR

W.P.No.17475 of 2025 and W.M.P.No.19816 of 2025

T. Maheshraj

Petitioner

vs.

1. The District Collector
Tiruvallur
2. The Assistant Divisional Engineer (H)
Office of the Assistant Divisional Engineer (H)
Thiruttani Sub Division
Thiruttani
3. The Revenue Divisional Officer
Revenue Divisional Office
Thiruttani
4. The Tahsildar
Thiruttani
5. The Assistant Engineer (H), C & M
Thiruttani Division

Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a writ of certiorari to call for the records of the second
respondent in connection with the memorandum no.512/2024/A1
dated 29.04.2025 and to quash the same.

For petitioner Mr. R. Srinivas
For respondents Mr. M.S. Arasakumar
Government Advocate

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ORDER

[made by M.SUNDAR, J.]

Captioned 'writ petition' (hereinafter 'WP' for the sake of brevity) has been filed with a prayer seeking issue of a writ of certiorari *qua* 'an order dated 29.04.2025 bearing reference Memorandum No.512/2024/A1 made by R2 (Assistant Divisional Engineer-Highways)' [hereinafter 'impugned order' for the sake of convenience and clarity].

2. There were two earlier writ petitions being W.P.Nos.2091 of 2024 and 24367 of 2024 and the same were disposed of *vide* orders dated 31.01.2024 and 03.10.2024 respectively. For the sake of ready reference, the 31.01.2024 and 03.10.2024 orders are scanned and reproduced below:

Order dated 31.01.2024:

'IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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T.Maheshraj

..

Petitioner

Vs.

1. The District Collector
Tiruvallur.

2. The Assistant Divisional Engineer (H)
Office of the Assistant Divisional Engineer (H)
Thiruttani Sub-Division, Thiruttani.

3. The Revenue Divisional Officer
Revenue Division Office, Thiruttani.

4. The Tahsildar
Thiruttani.

..

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus, calling for the records of the 2nd respondent in connection with the memorandum No. 111/2023/A1 dated 06/11/2023 issued by the 2nd respondent, and to quash the same consequently direct the 4th respondent to implement the order dated 27/12/2023 vide Na.Ka. 3102/2023/A2 issued by the 3rd respondent within a time frame.

For the Petitioner : Mr.Srinivas
Senior Counsel
for Mr.G.Vijayakumar

For the Respondents : Mr.A.Edwin Prabakar
State Government Pleader

ORDER

(Made by the Hon'ble Chief Justice)

Heard Mr.Srinivas, learned Senior Counsel appearing for Mr.G.Vijayakumar, learned counsel for the petitioner and Mr.A.Edwin Prabakar, learned State Government Pleader for the respondents.

2. Learned counsel for the petitioner submits that the impugned order has been passed without giving opportunity to the petitioner.



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3. According to the learned State Government Pleader, survey was conducted, measurement was carried out and encroachment was found on the Right of Way (RoW) of the Highway.

4. As far as the measurement is concerned, the petitioner has the remedy of appeal, if the petitioner is aggrieved by the measurement. As the impugned order dated 06.11.2023 is passed without issuing a show cause notice to the petitioner, we pass the following orders:

(i) The impugned order dated 06.11.2023 shall be construed as a show cause notice. The petitioner shall file a reply to the said show cause notice, if the petitioner so desires, within a period of ten days from today;

(ii) If reply is filed within ten days, then the authorities shall consider the said reply filed by the petitioner and take a decision on its own merits.

5. In light of the above, the writ petition stands disposed of. There shall be no order as to costs. Consequently, W.M.P.No.2244 of 2024 is closed.

(S.V.G., CJ.)

(D.B.C., J.)

31.01.2024'

Order dated 03.10.2024:

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2024

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.24367 of 2024 & W.M.P.No.26626 of 2024

T.Maheshraj

.. Petitioner

Vs.



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W.P.No.17475 of 2025

1. The District Collector
Tiruvallur.
2. The Assistant Divisional Engineer (H)
Office of the Assistant Divisional Engineer (H)
Thiruttani Sub~Division, Thiruttani.
3. The Revenue Divisional Officer
Revenue Divisional Office, Thiruttani.
4. The Tahsildar
Thiruttani.
5. The Assistant Engineer (H), C&M
Thiruttani Division. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India seeking of a writ of Certiorarified Mandamus calling for the records of the 5th respondent in connection with the memorandum No.83/2024/c.ngh (ne) dated 12.08.2024 issued by the 5th respondent and to quash the same and consequently, direct the respondents to close the ditch dug by them in between the petitioner-s property situated at Survey No.307/5A at Thiruttani Village, an extent of 25 cents and the highway.

For the Petitioner	:	Mr.R.Srinivas Senior Counsel
For the Respondents	:	For Mr.G.Vijayakumar Mr.A.Edwin Prabakar State Government Pleader Assisted by Mr.M.Habeeb Rahman Government Advocate

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

It is petitioner's case that notwithstanding fresh adjudication proceedings being conducted by respondent No.2, pursuant to an order dated 31.01.2024 passed by this Court in W.P.No.2091 of 2024, respondent No.5, who is an officer subordinate to respondent No.2, has issued the impugned order dated 12.08.2024.

2. We have considered the petition and the documents annexed



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thereto.

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3. Learned Senior Counsel submitted that the impugned order has been passed ignoring all submissions made by petitioner to respondent No.2. It is also averred that respondent No.2 has not even held an inquiry treating the order dated 06.11.2023 as a show cause notice or considered petitioner's explanation dated 07.02.2024.

4. Though the respondents had enough time to file counter, no counter has been filed denying any of the allegations. Therefore, without going into the merits of the matter, we hereby quash and set aside the impugned order dated 12.08.2024.

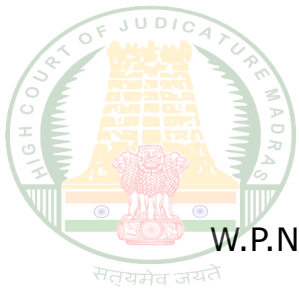
5. Respondent No.2 shall hold an inquiry and pass orders, after considering petitioner's representation/reply dated 07.02.2024. A personal hearing shall also be given to petitioner, the notice whereof shall be given at least five working days in advance. If petitioner wishes to file written submissions to record what was submitted during the personal hearing and also what transpired during the personal hearing, petitioner may do so within five working days of the personal hearing.

6. Petition is disposed of. We clarify that we have not made any observation on the merits of the matter. There shall be no order as to costs. Consequently, the interim application is closed.

(K.R.SHRIRAM, CJ) (SENTHILKUMAR RAMAMOORTHY,J.)
03.10.2024'

3. The aforereferred orders speak for themselves but owing to the nature of the order we propose to make, we refrain from dilating on the same. Be that as it may, the same have been captured for completion of facts and to aid appreciation of our order.

4. Short point is, this Court, *vide* order dated 31.01.2024 in



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W.P.No.2091 of 2024 (reproduced *supra*), has made it clear that 06.11.2023 notice shall be treated as a 'show cause notice' (SCN), 10 days time for response has been given to the writ petitioner and it has also been made clear that the authorities shall consider the reply of the writ petitioner and pass orders on its own merits. This, clearly, is the mechanism put in place *vide* Section 28 of 'the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)' (hereinafter 'TN Highways Act' for the sake of brevity). Section 28 (in its entirety) is reproduced below:

'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.'

5. In the case on hand, the writ petitioner has responded to the 06.11.2023 notice (now an SCN owing to the judicial order) *vide* a



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detailed response dated 07.02.2024 and a scanned reproduction of the same is as follows:

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By RPAD

Date:07.02.2024

To:

The Assistant Divisional Engineer (H),
Office of the Assistant Divisional Engineer (H),
Thiruttani Sub-Division,
Thiruttani.

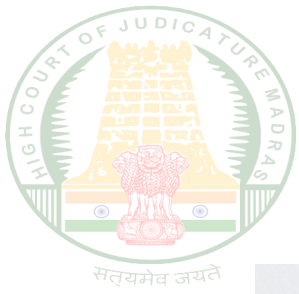
Sir,

Sub: Objections to the show cause notice no. 111/ 2023/ A1
dated 06/11/2023 – reg:

(1) I along with my sister Mrs. T. Cindhujah, D/o. Late Mr. K. V. Thirumal are the absolute joint owners of the property situated at survey no. 307/5A at Thiruttani Village, an extent of 25 cents. I submit that the said property was originally purchased by my grandfather Late Mr. K. Vinayagam by way of a registered sale deed dated 09/09/1947 registered as document no. 3024 of 1947 on the file of SRO Thiruttani. I submit that all the revenue records were also mutated in the name of K. Vinayagam, grandfather of the petitioner. The Patta for the said property stands in the name of my grandfather Mr. K. Vinayagam.

(2) I submit that after the demise of my grandfather the revenue records were mutated in the name of my father. I submit that my father, the late Mr. K. V. Thirumal, had obtained building approval plan from the local authority on 20/01/1995 and constructed shops

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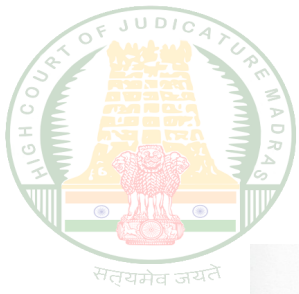
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in the said land. I submit that the said shops have been occupied by various traders, which is the source of income for their livelihood. I submit that we are paying all the necessary taxes to the government authorities, and we are in continuous possession of the above-mentioned property. Our entire property is private Patta property as per the title deeds and Patta.

(3) In these circumstances you had suddenly issued/ served a notice dated 06/11/2023 vide memorandum no. 111/2023/A1 to my tenants as if we have constructed the building by encroaching the road in KM 105/2 (opposite to Bus depot, Thiruttani) in Chengalpattu – Kanchipuram – Arakonam – Thiruttani Road KM 102/250 – 107/450 which is a National Highway. My tenants in turn informed me about the said notice issued by you. I further submit that you directed the tenants to remove the alleged encroachment by removing the buildings constructed on our property by my father on or before 16/11/2023 failing you have stated that you will remove the alleged encroachment.

(4) You have not issued any show cause notice as mandated under the Tamil Nadu Highways Act 2001 before passing the above said order, but you have come to wrong conclusion as if we have encroached the Highway. I submit that immediately I have

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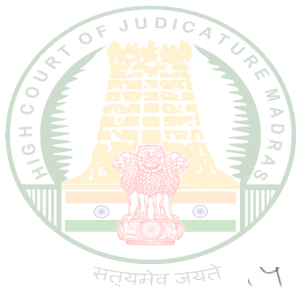
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measured my land with the help of a private surveyor to check whether I have made any encroachment as alleged and the said private surveyor had measured my above mentioned land and gave a report that the bus depot opposite to my land had encroached the Highway and the building constructed in my land has not encroached upon the Highway as alleged in the memorandum no. 111/2023/A1 dated 06/11/2023 issued by you.

(5) The property was purchased in the year 1947. The document has clear boundaries and linear measurements. In the year 1995 when the approval was granted by local authority there was no changes whatsoever in the boundaries and linear measurements. The construction was made strictly as per the approved plan by leaving front set back of 5 feet. I submit that the present allegation of encroachment by us is without any sort of records or documents or survey or examination. I submit that the property's size is the same for past 77 years and the building is standing there for past 29 years and all of a sudden it cannot become encroachment.

(6) I submit that immediately I have given a detailed reply/representation dated 23/12/2023 to you and other authorities with the copies of title documents, my building approval, Patta in my

[Handwritten signature]



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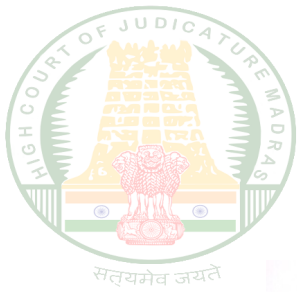
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father's name, the private surveyor report and made a request to the District Collector and RDO to measure my land.

(7) I submit that after considering my representation dated 23/12/2023, the RDO has issued an order dated 27/12/2023 vide Na.Ka.3102/2023/A2 addressed to the Tahsildar Thiruttani directing him to measure my land above mentioned in my presence, by forming a committee consisting of (i) Yourself (ii) Taluk deputy surveyor, RK Pettai (iii) Land surveyor, Tindivanam – Nagari Railway scheme (iv) Revenue inspector, Thiruttani (v) Village Administrative Officer.

(8) I submit that I have also visited the Tahsildar office and requested him to execute the RDO's order dated 27/12/2023 vide Na. Ka. 3102/ 2023/ A2 to measure my land In my presence and in the presence of the committee as mentioned in the order passed by the RDO. I submit that the Tahsildar also informed me that they will fix a date for measuring the land after discussing with all the committee members as per the order of the RDO after giving advance notice regarding the date of measurement. I submit that till today the committee had not measured my land.

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(9) I am given to understand that you did not co-operate with the other committee members to measure the property, however on the other hand you continued to dig the platform in front of our shops and threatened to demolish the building with help of earth movers and poclain excavator machines.

(10) Therefore I filed W.P. No.2091 of 2024 before the Hon'ble High Court Madras seeking the following relief:-

"Issue a WRIT OF CERTIORARIFIED MANDAMUS calling for the records of the 2nd Respondent in connection with the memorandum no. 111/ 2023/ A1 dated 06/11/2023 issued by the second respondent, and to quash the same consequently direct the 4th Respondent to implement the order dated 27/12/2023 vide Na. Ka. 3102/ 2023/ A2 issued by the 3rd respondent within a time frame to be fixed by this Hon'ble Court and pass such further or other orders as this Hon'ble Court may be deemed fit and proper in the circumstances of the case and thus render justice".

(11) The Hon'ble High Court passed an order dated 31/01/2024 in the above W.P. holding and directing as follows:-



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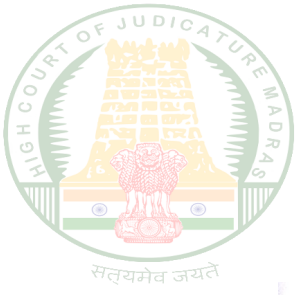
"As far as the measurement is concerned, the petitioner has the remedy of appeal, if the petitioner is aggrieved by the measurement. As the impugned order dated 06.11.2023 is passed without issuing a show-cause notice to the petitioner, we pass the following orders:

- i. The impugned order dated 06.11.2023 shall be construed as a show-cause notice. The petitioner shall file a reply to the said show-cause notice, if the petitioner so desires, within a period of ten days from today;
- ii. If reply is filed within ten days, then the authorities shall consider the said reply filed by the petitioner and take a decision on its own merits."

(12) I have already sent a letter by RPAD dated 31/01/2024 through my counsel to you requesting you to provide me a copy of your proceedings of survey and measurement of ROW and order fixing the same. Till date the order has not been supplied to us. We require the said order and proceedings to file an appeal.

(13) However no notice was given to me regarding the alleged surveys conducted on 3.10.2023 & 28.10.2023 and neither me nor

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my family members were present during the said surveys. Objection was not made by us to you as we were neither served with notice nor informed about the said survey. It seems you had stated that we made objections. It is false. We request you to give us the copies of the alleged objection.

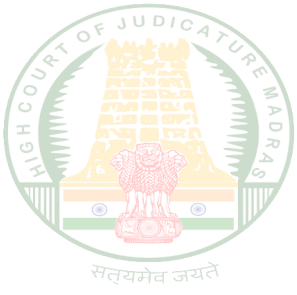
(14) Once again no notices were given to us for the alleged surveys conducted on 07.11.2023 and 22.11.2023. you had said we participated in the same. It is false.

(15) I request you to provide us copies of the proof of our participation in the surveys on 7.11.2023 and 22.11.2023.

(16) I submit that you have further stated that the encroached structure within the ROW was dismantled by the owner of the building on 20.1.2024. I submit that is absolutely false and wrong. We have never removed any part of our building.

(17) I submit that our property is Patta property. The building thereon is approved. No part of it is on Highway or ROW. We never received any notice from Government or Highways till date that our property was on Highway or ROW. No survey was ever done. I

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request you to give us all the documents sought for in this notice and then conduct an enquiry.

(18) I therefore request you to drop the proceedings against the above property and to conduct the survey as per the RDO Thiruttani order dated 27.12.2023 after giving notice to us and in our presence and ascertain the truth, facts, and ROW of the concerned Highway.

Thanking you,

Yours sincerely,

Encl:

As per the index attached.

(T. MAHESHRAJ)

Copy to:

(1) The Revenue Divisional Officer,
Revenue Division office, Thiruttani.

(2) The Tahsildar,
Thiruttani.



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6. The aforementioned 07.02.2024 response has been adverted to at serial no.3 in the reference part of the impugned order made by R2 but as rightly pointed out by learned Senior Counsel for the writ petitioner, there is no whisper about the response of the writ petitioner, much less any discussion *qua* dispositive reasoning. This is clearly contrary to the aforereferred 31.01.2024 order made by another Hon'ble Division Bench. In any event, it is contrary to the scheme of the statute and more particularly to Section 28 of the TN Highways Act which has been extracted and reproduced *supra*.

7. Therefore, we interfere with the impugned order on the short point that the writ petitioner's response dated 07.02.2024 has not been considered by R2.

8. The following order is made:

- i. The impugned order bearing reference Memorandum No.512/2024/A1 dated 29.04.2025 made by R2 is set aside on the short point that it is contrary to the 31.01.2024 judicial order and Section 28 of the TN



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Highways Act as it has not considered the writ petitioner's response dated 07.02.2024;

- ii. We make it clear that we have not expressed any view or opinion on the merits of the matter *qua* encroachment, all questions are left open and it is for the authorities concerned to make an order after considering the writ petitioner's response dated 07.02.2024 *vide* proviso to Section 28 (2)(ii) of the TN Highways Act;
- iii. The order made in the aforesaid manner by R2 shall be served on the writ petitioner within a period of seven working days from the date of the order under due acknowledgment;
- iv. Coercive action, in any manner, if any and if that be so, can only be subject to and depending on the order to be made by R2 in the aforesaid manner; and



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v. It is made clear that all rights and contentions of writ petitioner shall stand preserved for assailing such an order, if it is adverse to the writ petitioner.

9. Captioned WP stands disposed of in the aforesaid manner. As we have made it clear that coercive action, if any, is subject to order to be made by R2, captioned WMP stands disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (H.C.,J.)
06.06.2025

Index : Yes/No
Neutral Citation: Yes/No
cad



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To

1. The District Collector
Tiruvallur
2. The Assistant Divisional Engineer (H)
Office of the Assistant Divisional Engineer (H)
Thiruttani Sub Division
Thiruttani
3. The Revenue Divisional Officer
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Thiruttani Division



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M.SUNDAR, J.

and

HEMANT CHANDANGOUDAR, J.

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