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W.P.No.17462 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.17462 of 2025 and W.M.P. Nos.19801 and 19802 of 2025

S. Simson Sundara Raj

Petitioner

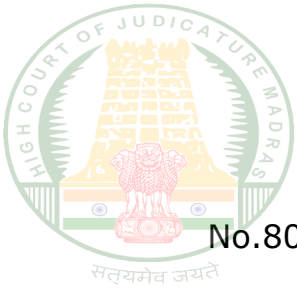
vs.

1. The Assistant Divisional Engineer (Highway)
(Construction and Maintenance)
Tambaram Sub Division
Tambaram
Chennai 600 042
2. The Assistant Engineer (Highway)
(Construction and Maintenance)
Tambaram Division
Tambaram
Chennai 600 042
3. The Tahsildar
Kundrathur Taluk
Kancheepuram District

Respondents

Writ Petition filed under Article 226 of the Constitution of India to
issue a writ of certiorarified mandamus to call for the records relating
to the impugned order of the first respondent in

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No.80/Encroachment/2025/ENiVu/dated 02.05.2025 and quash the same and consequently, direct the first respondent to consider the petitioner's representation dated 03.05.2025 and till then, not to disturb the petitioner's rightful possession and dispossess him from the land situated at S.No.4/1B2, Kundrathur Village, Kundrathur Taluk, Kancheepuram District.

For petitioner : Mr. L.G. Sahadevan
for Mr. A. Ilayaperumal
For respondents : Mr. M.S. Arasakumar
Government Advocate

ORDER

[was made by M.SUNDAR, J.]

Captioned main 'writ petition' [hereinafter 'WP' for the sake of brevity] has been filed *inter alia* assailing an 'order dated 02.05.2025 issued by R1 [Assistant Divisional Engineer, Highway {Construction and Maintenance} Tambaram Sub Division, Tambaram]' [hereinafter 'impugned order' for the sake of brevity, convenience and clarity].

2. Mr. L.G. Sahadevan, learned counsel representing Mr.A.Ilayaperumal, learned counsel on record for writ petitioner and Mr. M.S. Arasakumar, learned Government Advocate for respondents are before us.

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3. Adverting to the impugned order, learned counsel for the writ petitioner, submitted that the impugned order has been issued under Section 28 of 'the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)' (hereinafter 'TN Highways 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 seven days, is learned counsel's say.

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 the TN Highways Act in its entirety and the same 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--



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(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)

6. A careful perusal of Section 28 of TN Highways 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 order passed by R1 directly states that in the event of failure of removal of encroachment by writ petitioner, encroachment will be removed.



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7. It is also seen that the writ petitioner has responded to the impugned order *vide* his detailed response dated 03.05.2025, a scanned reproduction of which is as follows:

From:-
S.SIMSON SUNDARA RAJ,
S/o. Mr.T.Stephen,
Zion Prayer Hall,
No.10, Mettu Them, Karima Nagar,
Kundrathur, Chennai - 600 069.

Date:-03.05.2025

To,

1] **THE ASSISTANT DIVISIONAL ENGINEER (HIGHWAY)**
(Construction and Maintenance)
Tambaram Sub-Division,
Tambaram,
Chennai-600 042.

2] **THE ASSISTANT ENGINEER (HIGHWAY)**
(Construction and Maintenance)
Tambaram Division,
Tambaram,
Chennai-600 042.

Respected Sir/Madam

SUB:- Request not to initiate any further action pursuant to the proceeding dated 02.05.2025 of the 1st of you - Not to disturb my possession in the survey No. 4/1B2 Plot 7A, Kundrathur Village, Kundrathur Taluk, Kancheepuram District under the guise of removal of encroachment - Reg.

REF:- 1] Order dated 01.12.2020 in W.P.No.18595 of 2011.
2] Order dated 28.07.2023 in Cont.P.No.1205 of 2023 on the file of Hon'ble High Court of Madras.
3] The proceedings in Order No.80/Encroachment/2025/ENiVu/dated : 02.05.2025 of 1st of you

1] I am the pastor of the Zion Prayer Hall situated at No.10, Mettu Theru, Karima Nagar, Kundrathur, Chennai-600 069 (herein after called as the church). The said property originally belonged to one Mr. Rangasamy son of Mr. Kanni, he having acquired the same vide assignment order ref No.102882/74/B issued by the District Collector, comprised in survey No. 4/1B2 Plot 7A, Kundrathur Village, Kundrathur Taluk, Kancheepuram District.



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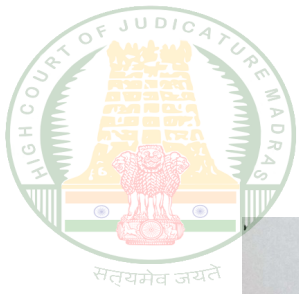
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2] I state that, I have purchased the said property from the said Mr.Rangasamy, in and by a sale deed dated 27.11.1978, registered as document No.3505 of 1978, on the file of Sub-Registrar at Poonamallee. I further state that I bought the said property, with intent to put up church and accordingly I have established the church with thatched roof and thereafter I have changed the thatched roof as the tiled roof. The said property is being provided with Electricity Service Connections and the electricity connection number is 234-07-108. I further state that I am conducting prayer meeting in the said church for the past 40 years in the said property without any interruption.

3] I state that several marriages were held in the said church premises and more than 150 peoples are associated with the said church. I further state that I have requested the Village Administrative Officer, Kundrathur to receive the tax to the said church. They informed to me that the religious institution is exempted from the tax. I further state that I am pastor of the church and I have been assisted by one Mr.Arul Samuel as the Asst. Pastor to the said church. In fact he is staying in a portion of the said church place.

5] I further state that I am running the church in the said premises for more than four decades. During the month of July, 2011, Staff from the office of the Tahsildhar, Sriperumpudhur Taluk, and the Revenue Inspector, Kundrathur and the Village Administrative officer, Kundrathur came to the church and enquired about who is the pastor and other particulars, immediately the said Asst Pastor informed them that I am the pastor of the said church and the said church is running for the past thirty years on the said premises. But they have intimated that we have to vacate and hand over the possession to them within a period 10 days, when the same was questioned by us, there was no positive



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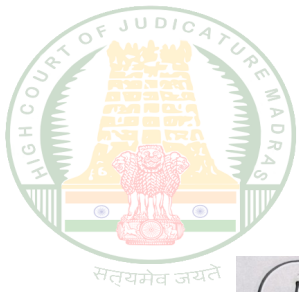
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reply from them and they strictly informed to us that we have to vacate and hand over the possession to them, failing which they will evict us under forcible manner without following the due process of law. Immediately I showed the copy of the said assignment order issued by the District collector to my vendor and the sale deed executed by my vendor in my favour. Having perused the same, they have not satisfied and warned us to vacate and hand over the possession within the said period.

6] I state that the the Tahsildhar, Sriperumpudhur Taluk, and the Revenue Inspector, Kundrathur and the Village Administrative officer, Kundrathur tried to evict me without following any due process of law and therefore, I have filed Writ Petition in W.P.No.18595 of 2011 by seeking "to issue Writ of MANDAMUS, forbearing the Respondents, their subordinates or any person claiming authority through them from in any manner interfering with the lawful possession, evicting, dispossessing the petitioner except due process of law". By considering my meritorious claim and also by recording the submission made by the Government Advocate on behalf of the respondents, by order dated 01.12.2020 in W.P.No.18595 of 2011, this Hon'ble Court was pleased to disposed the said Writ Petition with following directions:-

"3. I heard Mr.D.Senthilkumaar, the learned counsel for the Petitioner and Ms.R.J.Radhika, the learned Government Advocate for the Respondents.

4. Mr.Senthilkumaar submitted that the Petitioner is the owner of the Property and had purchased the same under the sale deed dated 27.11.1978 from Mr.Rangasamy, who was assigned the Property by the Collector. Therefore, he submits that he cannot be dispossessed except by due process of law, whereas the Respondents are threatening to



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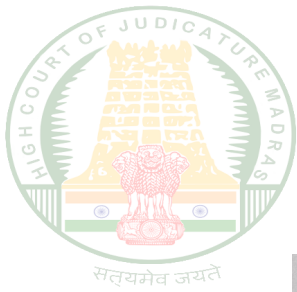
dispossess him and, therefore, the Petitioner was constrained to file the writ petition.

5. In response, the learned Government Advocate submits that the Petitioner will not be dispossessed except by following the due process of law.

6. In view of the submissions of the learned counsel for the respective parties, I am of the view that this writ petition can be disposed of by recording the submission that the Respondents would not dispossess the Petitioner except by following the applicable statutory procedure. This writ petition is disposed of on the above mentioned terms. Consequently, connected miscellaneous petitions are closed. No costs."

7] I humbly submit that the Hon'ble Court was pleased to dispose of the above said writ petition only by recording the submission made by the Learned Government Advocate on behalf of the respondents therein. During, the 2nd week of May, 2023 i.e., 10.05.2023, again the Tahsildhar, Kundrathur along with his subordinates and the officials from your office came without issuing any notices and without following the order of the Hon'ble High Court of Madras to demolish the said Church and house situate in S.No.4/1B2 of Kundrathur Village by violating their own undertaking before this Hon'ble Court in W.P.No.18595 of 2011. Therefore, I have initiated the contempt proceedings vide Cont.Petn.No.1205 of 2023 before the Hon'ble High Court of Madras.

8] I state that during the course of hearing the aforesaid contempt petition, the Government Advocate appearing on behalf of the contemnor has alleged to served some papers to us, which was also refuted



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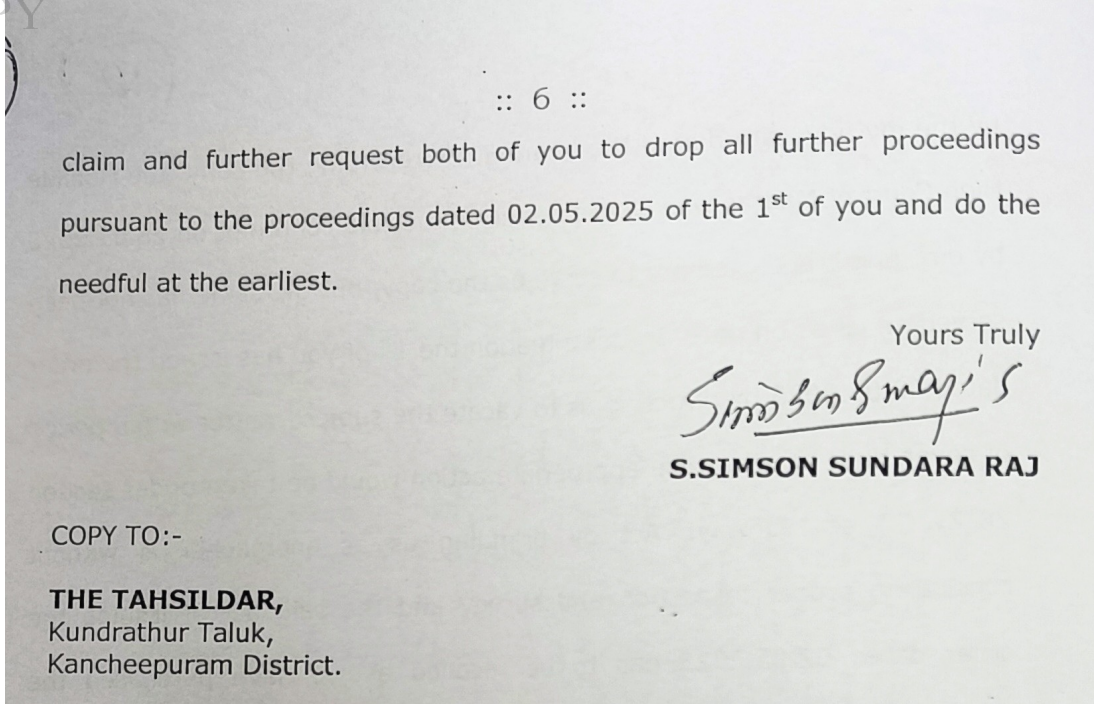
by the my advocate during the hearing. By recording the same the Hon'ble High Court of Madras was pleased to close the said contempt on 28.07.2023 by directing the contemnors to serve us the copy, but the same has not been served on us as on date. In this situation the 1st of you has issued the order dated 02.05.2025 by directing us to vacate the subject matter within period of seven days or otherwise appropriate action would be taken under section 28(2) (ii) of Highways Act by branding us as encroacher is without conducting proper inspection and survey and the said act of issuing the order dated 02.05.2025 has to be recalled as we have purchased the subject matter of the property vide Sale Deed dated 27.11.1978, registered as document No.3505 of 1978, on the file of Sub-Registrar at Poonamallee, from one Rangasamy as his order of assignment issued by the District Collector holds good as on date. The said assignment order issued in favour of the said Rangasamy has not been cancelled as my purchase is legally valid and we cannot be treated as encroacher in any of the circumstances. Further, both of you have not followed the orders of the Hon'ble High Court of Madras. It is pertinent to note the proceedings dated 02.05.2025 of the 1st of you is nothing but clear arbitrary and without following the due process of law and violation of the above said orders. As the subject of matter of the property was assigned by the Revenue Authorities and we cannot be treated as encroacher in the Highway land. We have sufficient documents to prove our claim as such we need opportunities of personal hearing to putforth our claim before you.

Under the above said circumstances, I hereby request that both of you have got legal obligation to consider my request by providing reasonable opportunities of personal hearing by issuing notice to prove our



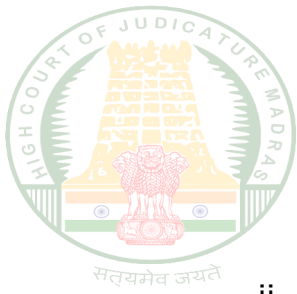
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8. In view of noncompliance of proviso to Section 28(2)(ii) of the TN Highways Act, in order to secure the ends of justice, the following order is made:

- i. Impugned order shall be treated as a show cause notice (SCN) served on the writ petitioner today and the writ petitioner's representation dated 03.05.2025 in response to the impugned order which is now directed to be treated as SCN, shall be considered on its own merits and in accordance with law by R1 and final orders shall be passed by R1 in accordance with proviso to Section 28(2)(ii) of TN Highways Act;



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- ii. Final order so passed shall be served on the writ petitioner within a period of five working days from the date of the final order;
- iii. If the final order to be passed by R1 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 R1 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 so passed by R1 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 R1 under proviso to Section 28(2)(ii) of TN Highways 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, R1, 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. In view of the order passed in the captioned WP, the order of interim stay granted by another Hon'ble Division Bench on 09.05.2025 (Vacation Court) stands vacated and as a sequitur, captioned writ miscellaneous petitions stand disposed of as closed. There shall be no order as to costs.

[M.S., J.]

[H.C., J.]

06.06.2025

cad

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order



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To:

1. The Assistant Divisional Engineer (Highway)
(Construction and Maintenance)
Tambaram Sub Division
Tambaram
Chennai 600 042
2. The Assistant Engineer (Highway)
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M.SUNDAR, J.

and

HEMANT CHANDANGOUDAR, J.

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