



W.P.No.18830 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MR.JUSTICE **HEMANT CHANDANGOUDAR**

W.P.No.18830 of 2025

and

W.M.P.No.21084 of 2025 in W.P.No.18830 of 2025

J.Thiripura Sundari

... Petitioner

Vs.

- 1.The Secretary to Government,
Home Department,
Secretariat, Chennai – 600 009.
- 2.The Secretary to Government,
Public Works Department,
Secretariat, Chennai – 600 009.
- 3.The Project Director,
National Highways Authority of India,
5th Floor, CMRL Building,
Poonamallee High Road,
Koyambedu, Chennai – 600 107.
- 4.The District Collector,
Chennai District Collector Office,
Chennai – 600 001.



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- 5.The Executive Engineer,
Highways Department
(National Highway Wing),
Construction and Maintenance,
Chennai City Roads Division II,
Arumbakkam, Chennai – 600 106.
- 6.The Assistant Divisional Engineer,
Highways Department,
Construction and Maintenance,
Chennai City Roads Division II,
Arumbakkam, Chennai – 600 106.
- 7.The Assistant Engineer,
Highways Department,
Construction and Maintenance,
Chennai City Roads Division II,
Arumbakkam, Chennai – 600 106.
- 8.The Divisional Engineer,
Highways Department,
Construction and Maintenance,
Chennai City Roads Division II,
Saidapet, Chennai – 600 015.
- 9.The Assistant Divisional Engineer,
Highways Department,
Construction and Maintenance,
Chennai City Roads Division II,
Saidapet, Chennai – 600 015.
- 10.The Assistant Engineer,
Highways Department,
Construction and Maintenance,
Chennai City Roads Division II,
Saidapet, Chennai – 600 015.
- 11.The Tahsildar,
Aminjikarai Taluk Office,
Chennai.



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12.The Commissioner of Police,
Vepery, Chennai.

13.The Assistant Commissioner of Police,
Arumbakkam, Chennai.

... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records in respect of the impugned notice of the 6th respondent vide No.SHU 86/2025/vu/dated 02.05.2025 and quash the same and to further direct the third respondent to pay the compensation of Rs.50 lakhs towards illegal demolition and Rs.80 lakhs towards damaging valuable machineries and materials respectively.

For Petitioner : Ms.Saraswathi Muthiah

For Respondents : Mr.T.K.Saravanan,
Additional Government Pleader
for R1, R2, R4 to R11
Ms.S.R.Sumathi,
Standing Counsel for R3
Mr.S.Santhosh,
Government Advocate (Crl. Side)
for R12 and R13

ORDER

[Order of the Court was made by **M.SUNDAR, J.,**]

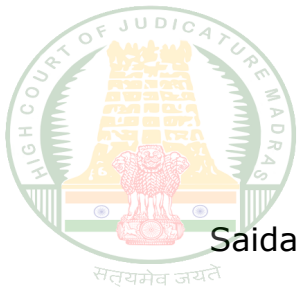
Captioned main 'Writ Petition' [hereinafter 'WP' for the sake of brevity] has been filed for issue of a Writ of Certiorarified Mandamus.



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Certiorari limb of the prayer assails a 'notice dated 02.05.2025 issued by R6 [Assistant Divisional Engineer, Highways Department, Construction and Maintenance, Chennai City Roads Division II, Arumbakkam, Chennai – 600 106.]' {hereinafter 'impugned notice' for the sake of brevity, convenience and clarity}. Mandamus limb of the prayer is to mandamus R3 to pay a compensation of Rs.50 lakhs towards illegal demolition and Rs.80 lakhs towards damages.

2. Ms.Saraswathi Muthiah, learned counsel on record for writ petitioner, advertng to the impugned notice, submitted that the impugned notice has been issued under Section 28 of 'the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)' (hereinafter 'said 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. Learned counsel for writ petitioner submits that similar notice bearing reference குறிப்பாணை எண்.68/2025/இ.நி.வ.அ dated 22.01.2025 has been issued by R9 [Assistant Divisional Engineer, Highways Department, Construction and Maintenance, Chennai City Roads Division II,



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Saidapet, Chennai – 600 015], calling upon the writ petitioner to remove alleged encroachment within seven days.

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3. Issue notice.

4. Mr.T.K.Saravanan, learned Additional Government Pleader, accepts notice for R1, R2, R4 to R11, Ms.S.R.Sumathi, learned Standing Counsel, accepts notice for R3 and Mr.S.Santhosh, learned Government Advocate (Crl. Side), accepts notice for R12 and R13.

5. 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 in the Admission Board *i.e.*, Motion List.

6. Before we proceed further, we deem it appropriate to extract and reproduce Section 28 of said 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



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checks and periodical inspection of the highway boundaries, with the view to ensure the prevention of unauthorised encroachment and the removal of such encroachment.

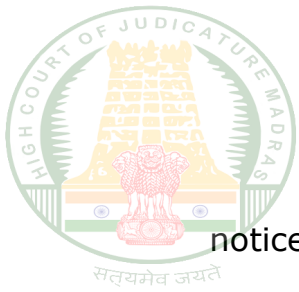
(2) The Highways authority or any person authorised by it in this behalf, may--

(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.'

7. 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 case on hand, without issuing a 'show cause notice' (hereinafter 'SCN' for the sake of brevity), the impugned



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notice issued by R6 and notice issued by R9 directly state that in the event of failure of removal of encroachment by writ petitioner, encroachment will be removed by authorities concerned. Therefore, we are of the considered view that it would serve the ends of justice if the impugned notice and the notice dated 22.01.2025 are directed to be treated as SCNs and the writ petitioner is given an opportunity to send a representation (if so advised and if so desired) so that the authority or officer concerned can pass final orders considering the cause shown.

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

i. The impugned notice dated 02.05.2025 issued by R6 and the notice dated 22.01.2025 issued by R9 shall now be treated as SCNs;

ii. Writ petitioner can now send a response to the SCNs within seven days from today *i.e.*, by 12.06.2025 (if so advised and if so desired);

iii. If the writ petitioner sends such a representation, the same shall be considered on its own merits and in accordance with law and final orders shall



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be passed by the authority or officer concerned 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 official respondents to proceed in accordance with law;

v. 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 the authority or officer concerned under proviso to Section 28(2)(ii) of TN Highways Act;

vi. We also make it clear (though obvious) that we have not expressed any view or opinion on the merits of the matter and therefore, the authority or officer concerned, while passing final orders, shall do so untrammelled by the observations made in this order;

vii. All the rights and contentions of noticees *qua* Section 28(2)(ii) of said Act are preserved for being



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canvassed before the authority concerned;

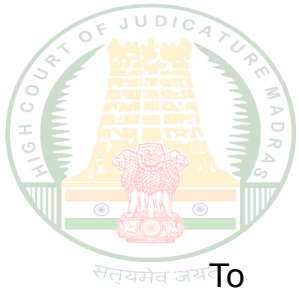
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viii. If the order made by authority concerned in the aforesaid manner is adverse to the writ petitioner, the same shall be kept in abeyance for a fortnight from the date of service of the order on the writ petitioner so as to provide a window to the writ petitioner to assail the said order (if permissible in law) or to seek judicial review of the order. If the writ petitioner does not do so within a fortnight from the date of service of the order, the order passed by authority concerned will be resuscitated and put into motion. If the order is in favour of the writ petitioner, that will be the curtains on the matter.

9. Captioned WP stands disposed of with the aforementioned observations and directives in the aforesaid manner. Consequently, captioned writ miscellaneous petition thereat is disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (H.C.,J.)
05.06.2025

Index : Yes / No
Neutral Citation : Yes / No
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- 14.The Public Prosecutor,
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**M.SUNDAR, J.,
and
HEMANT CHANDANGOUDAR, J.,**

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