



W.P.No.21970 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 19.06.2025

CORAM

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

and

THE HONOURABLE MR.JUSTICE **HEMANT CHANDANGOUDAR**

W.P.No.21970 of 2025
&W.M.P.No.24722 of 2025

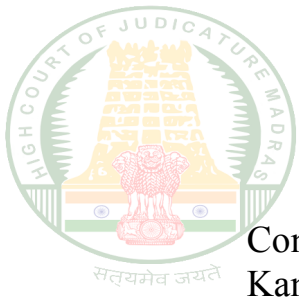
The Pattur Jamia Big Mosque
Managing Committee represented by
its Secretary Mr.Sadiq Batcha
Pattur, Mangadu
Chennai - 600 122

... Petitioner

Vs.

1. The Secretary to Government
Department of Highways and Minor Ports
Fort St.George, Secretariat
Chennai - 600 009
2. The Chief Engineer(H)
Construction and Maintenance
Tamilnadu Highways Department
Integrated Chief Engineers Office
HRS Campus
No.76, Sardar Patel Road
Guindy, Chennai - 600 025
3. The Divisional Engineer

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Construction and Maintenance
Kancheepuram

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4. Assistant Divisional Engineer (H)
Construction and Maintenance
Sriperumbuthur, Kancheepuram District

5. The Tamil Nadu Wakf Board
Represented by its Chief Executive Officer
No.1, Jaffer Syrang Street
Vallai Seethakathi Nagar
Chennai - 600 001

6. The Superintendent of Wakf
Poonamallee Zone
Poonamallee Big Pallivasal
Chennai - 600 056

... Respondents

Writ Petition filed under Article 226 of The Constitution of India
praying to issue Writ of Certiorarified Mandamus calling for the records of
the 4th respondent in Thakeethu No.243/2025/U dated 30.05.2025 and
quash the same and consequently direct the Respondents 1 to 4 to pay the
compensation for demolishing the buildings earlier to the impugned notice.

For Petitioner : Mr.C.Sivakumar

For Respondents : Mr.T.K.Saravanan
Additional Government Pleader
for R1 to R4



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Mr.Mohammed Fayaz Ali
for R5 to R6

ORDER

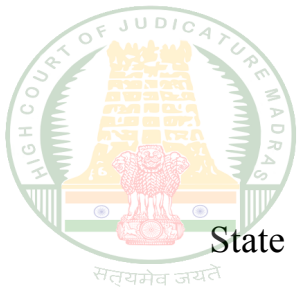
[Order of the Court was made by **M.SUNDAR, J.,**]

When the matter was taken up, Mr.C.Sivakumar, learned counsel for writ petitioner submitted that similarly placed persons qua writ petitioner had earlier filed writ petitions, one such writ petition is W.P.No.20332 of 2025 and the same {along with 'Writ Miscellaneous Petition' ['WMP' for the sake of brevity] thereat} came to be disposed of by a Division bench of this Court in and by an order dated 09.06.2025.

2. Issue notice.

3. Mr.T.K.Saravanan, learned Additional Government Pleader accepts notice for Respondents 1 to 4 and Mr.Mohammed Fayaz Ali, learned counsel accepts notice for R5 and R6.

4. Mr.T.K.Saravanan, learned Additional Government Pleader very fairly submits that the certiorari limb of the prayer in the captioned matter is directly and squarely covered by the afore-referred order dated 09.06.2025 in W.P.No. 20332 of 2025 and W.M.P No.22915 of 2025 thereat and learned



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State counsel has placed before us a copy of the order and a scanned reproduction of the same is as follows:



W.P.No.20332 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2025

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE P.DHANABAL

W.P.No.20332 of 2025

&

W.M.P.No.22915 of 2025

Mrs.Channa

... Petitioner

Vs.

1. The District Collector
Office of the Collector
Kancheepuram District, Kancheepuram
2. The Commissioner
Mangadu Municipality
Mangadu, Chennai – 600 122
3. The Chief Executive Engineer
The Tamilnadu Highways Department
II Floor, Integrated CEs' Office
76, Sardar Patel Road
Guindy, Chennai – 600 025
4. The Divisional Engineer (C and M)
Kancheepuram Division
Kancheepuram – 631 501

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5. The Sub Divisional Engineer (C and M)
Sriperumpudur
Kancheepuram District – 602 106

6. The Assistant Engineer (C and M)
Kundrathur, Chennai – 600 069 ... 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 relating to order issued by the fifth respondent Thaakeed Notice No.243/U/dated 30.5.2025, quash the same and consequently direct the respondents to forbear all further proceedings of the respondents from initiating any coercive action of demolishing the petitioners' premises pursuant to the Thaakeed notice dated 30.05.2025 bearing Thaakeed Notice No.243/U/issued by fifth respondent herein under Sections 28(2)(i) and 29(1) of the Tamil Nadu Highways Act, 2001 pertaining to the petitioners' premises comprised in Natham Survey No.695, New Survey No.690/3 and 833, situated at Door Old No.9, New No.17, Main Road, Pattur Mangadu, Chennai – 600 122.

For Petitioner : Ms.K.Zeenath Shariffa
For Respondents : Mr.T.K.Saravanan
Additional Govt. Pleader for R1 to R6

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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 *inter alia* assailing an 'order dated 30.05.2025 issued by R5 [Sub Divisional Engineer (Construction and Maintenance), Sriperumpudur, Kancheepuram District- 602 106]' (hereinafter 'impugned order' for the sake of brevity, convenience and clarity).

2. At the outset, it is worth pointing out that in the affidavit and prayer in the writ petition, reference of impugned order has been wrongly stated as Notice No.245/U instead of Notice No.243/U and further, the provisions under which impugned order has been made, have been wrongly stated as Sections 28(2) (i) and 29(1) of TN Highways Act instead of Sections 28(2)(ii) and 29(1) of TN Highways Act. Faced with this situation, Ms.K.Zeenath Shariffa, learned counsel on record for writ petitioner, requested this Court to read the reference of impugned order as 'Notice No.243/U' and provisions under which the impugned order has been issued as 'Sections 28(2)(ii) and 29(1) of TN Highways Act'. Considering the facts and circumstances of the case, as one off matter, this request is acceded to.

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Hence, this Court deems it appropriate to read the reference as 'Notice No.243/U' and provisions under which the impugned order has been made as 'Sections 28(2)(ii) and 29(1) of TN Highways Act' and accordingly, proceeds further on that basis.

3. Ms.K.Zeenath Shariffa, learned counsel on record for writ petitioner, advertent to the impugned notice, submitted that the impugned notice has been issued under Section 28(2)(ii) and 29(1) 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.

4. Issue notice.

5. Mr.T.K.Saravanan, learned Additional Government Pleader, accepts notice for R1 to R6.

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6. 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.

7. 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 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

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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.'

8. A careful perusal of Section 28 of said Act brings to light that we are concerned with Section 28(2)(ii) and the proviso thereof 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 notice issued by R5 directly states 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 dated 30.05.2025 is directed to be treated as SCN 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

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considering the cause shown.

WEB COPY 9. In the light of the narrative, discussion and dispositive reasoning set out *supra*, following order is passed:

- i. The impugned notice dated 30.05.2025 issued by R5 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 16.06.2025 (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 by R5 and final orders shall be passed by R5 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

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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 R5 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, R5, while passing final orders, shall do so untrammelled by the observations made in this order; and

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

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

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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.) (P.D.B.,J.)
09.06.2025
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To

1. The District Collector
Office of the Collector
Kancheepuram District, Kancheepuram
2. The Commissioner
Mangadu Municipality
Mangadu, Chennai – 600 122
3. The Chief Executive Engineer
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Kancheepuram Division
Kancheepuram – 631 501
5. The Sub Divisional Engineer (C and M)
Sriperumpudur
Kancheepuram District – 602 106
6. The Assistant Engineer (C and M)
Kundrathur, Chennai – 600 069

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M.SUNDAR, J.,
and
P.DHANABAL, J.,
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5. In the light of the fair stand taken by learned State counsel, certiorari limb of the prayer in the captioned matter stands disposed of by making a similar order and the same is as follows:

i. The impugned notice dated 30.05.2025 issued by R4 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 26.06.2025 (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 by R4 and final orders shall be passed by R4 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



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further coercive action *qua* removal of encroachment will be subject to / depending on final orders to be passed by R4 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, R4, while passing final orders, shall do so untrammelled by the observations made in this order; and

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

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.



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ix) As regards the mandamus limb without either

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acceding or dismissing, it is closed as the same will be subject to outcome of the afore-referred legal drill.

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.)

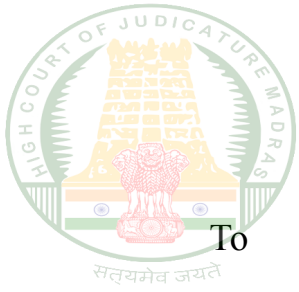
(H.C.,J.)

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To

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**M.SUNDAR, J.,
and
HEMANT CHANDANGOUDAR, J.,**

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