



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2025

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CORAM:

THE HONOURABLE MR. JUSTICE M. SUNDAR

AND

THE HONOURABLE MR. JUSTICE HEMANT CHANDANGOUDAR

W.P. No.31710 of 2025 and W.M.P.Nos.35504 and 35506 of 2025

K. Balaji

Petitioner

vs.

1. The District Collector
Office of the District Collector
Chengalpet District
Chengalpet
2. The Tahsildar
Tiruporur Taluk
Tiruporur District
3. The Assistant Divisional Engineer
Highways Department
Office of the Divisional Engineer
Alagesan Nagar
Chengalpet District
Chengalpet 603 001

4. D. Murali

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records of the third respondent and quash the show cause notice dated 11.07.2025 relating to the commercial shop bearing no.1/268, King Proteins, Old Mahabalipuram Road, Padur, Chengalpattu District comprised in Survey No.80.



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W.P. No.31710



For petitioner Mr. G. Palani

For respondents Mr. T.K.Saravanan
1 to 3 Addl. Govt. Pleader

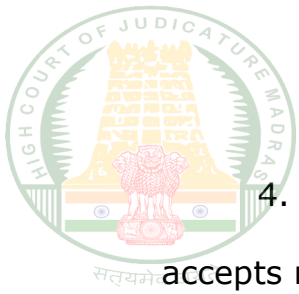
ORDER

(made by M. SUNDAR, J.)

Captioned main 'writ petition' [hereinafter 'WP' for the sake of brevity] has been filed assailing an 'order dated 11.07.2025 issued by third respondent (Assistant Divisional Engineer, Highways)' [hereinafter 'impugned order' for the sake of brevity, convenience and clarity].

2. Adverting to the impugned order, Mr. G. Palani, learned counsel on record for writ petitioner, submitted that the impugned order has been issued under Section 28(2)(ii) 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.

3. Issue notice to respondents.



4. Mr.T.K.Saravanan, learned Additional Government Pleader, accepts notice for official respondents (respondents 1 to 3).

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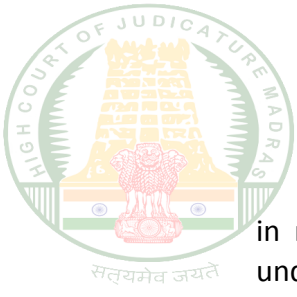
5. The scope of captioned main WP is substantially narrow, legal drill on hand is very limited and therefore, with the consent of learned counsel for writ petitioner and learned State counsel, captioned main WP is taken up for final disposal in the Admission Board itself, dispensing with notice to fourth respondent in the light of the order this Court proposes to make.

6. Before we proceed further, we deem it appropriate to extract and reproduce Section 28 of 'The Tamil Nadu Highways (Amendment) Act, 2024 (Tamil Nadu Act 11 of 2024) [hereinafter 'Amended Highways Act' for the sake of convenience and clarity] in its entirety and the same 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 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.



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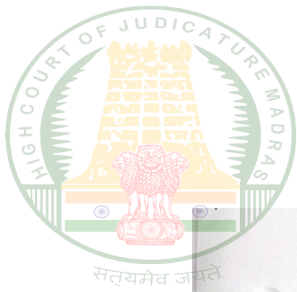
(ii) remove any immovable structure, whether permanent or temporary in nature, encroaching the highway or in the area vested with Government under this Act, after issuing a show cause notice against such removal, returnable within a period of seven days from the date of receipt thereof:

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)

7. A careful perusal of Section 28 of Amended 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 being calling upon to remove the alleged encroachment, if any. In the case on hand, without issuing a show cause notice (SCN), the impugned order issued by third respondent directly states *inter alia* that in the event of failure of removal of encroachment by writ petitioner, encroachment will be removed by the Highways Department itself.

8. It is also seen that the writ petitioner has construed the impugned order as SCN and responded to the impugned order *vide* his detailed reply dated 17.07.2025, a scanned reproduction of which is as follows:



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From

K.Balaji,
Son of Kannaiyan,
No.1/268, OMR Road,
Padur, Chengalpattu District,

Cell No. 99627 17788

R.P.A.D.

RT743038798IH IVR:8284743038
KL AHMA ROAD H.O <600002>
Counter No:7.17/07/2025,18:42
To:THE ASSIST DT.HIGHWAYS DEPARTM
PIN:603001, Chengalpattu HO
From:K BALAJI,HO 1/268 OMR ROAD
Wt:20gms Ack Fee:3.00,REG=17.0
Amt:29.50,Tax:4.50,Amt.Paid:30.00(Cash)
<Track on www.indiapost.gov.in>

Dated : 17-07-2025

The Assistant Divisional Engineer,
Highways Department,
Office of the Divisional Engineer,
Alagesan Nagar,
Chengalpattu - 603 001.

Sir,

SUB : Reply to your notice dated 11-07-2025 received by me on
14-07-2025 reg.

REF : Your Notice dated 11-07-2025 received by me on 14-07-2025

With reference to the above, I submit the above notice dated 11-07-2025, issued calling upon to vacate and handover the vacant possession of the property consist of building where the business are carried on in the name and style of "King Protein" at Padur Village, comprised in Survey No.80, O.M.R. Road, Chengalpattu District is not maintainable and same is arbitrary since I have not encroached upon the land classified as "Cart Track". The above said land where the permanent structure was built were in our possession and enjoyment for decades i.e. more than 100 years.

It is submitted that the show cause notice issued under Section 28(2) of Tamil Nadu Highways Act, 2001 is arbitrary and without any merits.



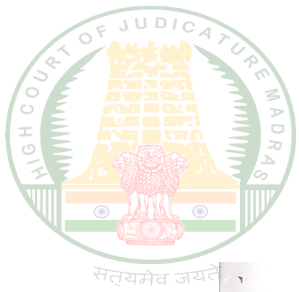
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It is further submitted that our patta land situated directly opposite to the above said land where the business is carried on the name and style of "King Proteins" has been acquired by the Highways Department for widening of the O.M.R., vide G.O.No.485 and 1246 dated 29-12-1993 and 22-11-1996 respectively. Pursuant to the above G.O., the Assistant Divisional Engineer, Mahabalipuram by proceedings dated 07-07-2000, issued notice to my Father Kannaiya Naidu, and acquired land comprised in survey No.82 /1G, Patta No.386, of Padur Village, measuring 69 M.Square, or about 750 Sq.Ft., abating the O.M.R. Road.

It is submitted that no compensation has been paid or received either by my father or my family members till date and we have not filed any objection to the acquisition of the above said land and oral promise and assurance was given then by the Highways Department Authorities that they will not disturb the land and the permanent structure, which were in our possession and enjoyment named "King Proteins" measuring 400 sq.ft., In fact, the land parted by my father measuring about 750 Sq.ft., for the purpose of widening of the road, at present market value calculated at Rs.1.5 Crores and not even a single pie has been paid as against the above acquisition. Apart from my father, my grand father late Rangappa Naidu and other family members, has also given their share of land to the highways department, comprised in survey No.79,81 and 277 of Padur Village, for widening purpose.

It is submit that the small portion of land comprised in Survey No.80, is situated next to our patta land with buildings and we continue to carry on business for more than 40 years for our livelihood.

[Handwritten Signature]



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Further, one D.Murali, who owns vacant land, next to our shop has filed Writ Petition bearing No.3810 / 2025 before the Hon'ble High Court of Madras, by impleading the Revenue Authorities, Highways Department and myself as 7th Respondent, without any legal ground and for his unlawful gain. The Hon'ble Division Bench, High Court of Madras by order dated 07-02-2025 dismissed the above Writ Petition by observing.

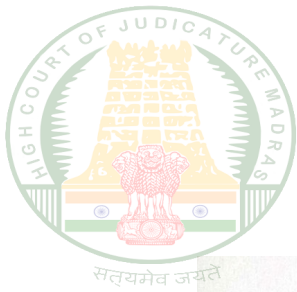
“ Writ Petition has been filed alleging encroachment in public road, by R7, but there is no Prima-facie material qua Public Road.

Thus the Hon'ble Division Bench of High Court of Madras has already dismissed the Writ Petition filed by the neighbor, seeking to initiate appropriate action against me pursuant to the representation of the above said D.Murali, dated 09-10-2024. Thus the above said D.Murali, the neighbor with a view to dispossess me from the above said piece of land and to make use of the same for his own purpose, approached you viz. the Highways Department by false representation dated 09-10-2024 and also filed the above said Writ Petition, which has been dismissed by the Hon'ble High Court of Madras by order dated 07-02-2025.

I submit that there is no Cart Track as stated in the show cause notice in survey No.80, and I never encroach upon the O.M.R. Road, and the land is not at all in use for all these years except the same is in absolute possession and enjoyment for more than 40 years and the lands were not needed for the Government and the same is not inconvenience to the public.

I respectfully submit that the Government of Tamil Nadu taking note of the various decision of Hon'ble High Court of Madras, constituted a committee in the year 2006 itself and issued direction to grant patta for those residing / enjoying for more than 10 years.

J. Bolis



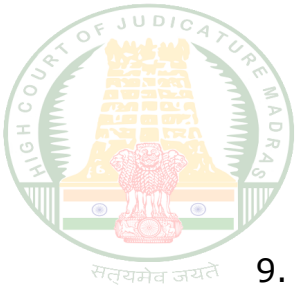
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Therefore, the issuance of notice Under Section 28(2) of the Tamil Nadu Highways Act, 2001 is unsustainable and against my Interest and my livelihood.

In those circumstances, I hereby call upon you to withdraw the show cause notice dated 11-07-2025 received by On 14-07-2025 for the reason stated above as I am in continuous and uninterrupted possession and enjoyment of the above said piece of land with permanent structure for more than 40 years and expecting patta from the revenue authorities as against the G.O.s passed by the Government. Hence I call upon you to consider this reply and protect me from any adverse action as the Hon'ble Division Bench of the High Court of Madras by order dated 07-02-2025, dismissed the prayer sought by the neighbor D.Murali, by impleading all necessary parties including the Highways and myself.

I thank you,

K. Balaji
K. BALAJI.



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9. In view of non-compliance of proviso to Section 28(2)(ii) of Amended Highways Act, in order to secure the ends of justice, the following order is made:

- i. Impugned order shall be treated as an SCN served on the writ petitioner today (28.08.2025) and the writ petitioner's representation dated 17.07.2025 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 third respondent and final orders shall be passed by third respondent in accordance with proviso to Section 28(2)(ii) of Amended Highways Act;
- ii. In the reply dated 17.07.2025, writ petitioner/noticee has taken a stand that his patta land was taken over / utilised without resorting to acquisition proceedings, without payment of compensation and in lieu of the same, the land which is the subject matter of SCN was allotted to writ petitioner. This specific point shall be addressed and answered by third respondent while making 'final orders *vide* proviso to Section 28(2)(ii);
- iii. Final orders so passed shall be served on the writ petitioner within five working days from the date of the final orders;



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- iv. If the final orders to be passed by third respondent end up in favour of the writ petitioner, that would be curtains on the matter;
- v. If it happens to the contrary, in other words, if the final orders to be passed by third respondent are 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 orders 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;
- vi. 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 orders, the final orders to be passed by third respondent will be resuscitated and put into motion;
- vii. 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 third respondent under proviso to Section 28(2)(ii) of Amended Highways Act;
- viii. We make it clear (though obvious) that we have not expressed any view or opinion on the merits of the matter and therefore, third respondent, while passing final orders, shall do so untrammelled by the observations made in this order; and



ix. It is also made clear that this order does not touch or impinge upon the rights and contentions of fourth respondent (private respondent) and all his rights and contentions stand preserved

10. Captioned WP stands 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.

(M.S., J.) (H.C., J.)
28.08.2025

cad

Index : Yes/No

NC : Yes/No

To

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Tiruporur District
3. The Assistant Divisional Engineer
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M. SUNDAR, J.

and

HEMANT CHANDANGOUDAR, J.

cad

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