



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2025

CORAM:

THE HONOURABLE MR. JUSTICE M. SUNDAR

AND

THE HONOURABLE MR. JUSTICE HEMANT CHANDANGOUDAR

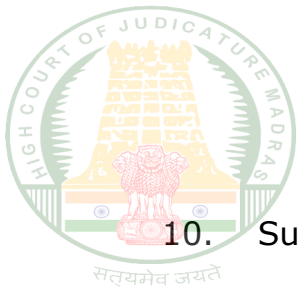
W.P.No.30384 of 2025

Venkatachalam

Petitioner

vs.

1. The District Collector
Office of the Collector
Salem District
2. The Revenue Divisional Officer
Attur Taluk
Salem District
3. The Tahsildar
Attur Taluk
Salem District
4. The Assistant Divisional Engineer
(Construction and Maintenance)
Highways Department
Attur Taluk
Salem District
5. Poochi
6. Raja
7. Kalyanasundaram
8. Mokkaiyammal
9. Anitha



10. Sugumaran

11. Chandrasekaran

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents/authorities to remove the encroachment made by the respondents 5 to 11 in S.No.152, Ammampalayam Village, Attur Taluk, Salem District in the light of G.O.Ms.No.64 dated 08.02.2022 after conducting proper enquiry on the petitioner's representation dated 15.04.2025.

For petitioner Mr. A. Rajakumar

For RR 1 to 4 Mr. T.K. Saravanan
Addl. Govt. Pleader

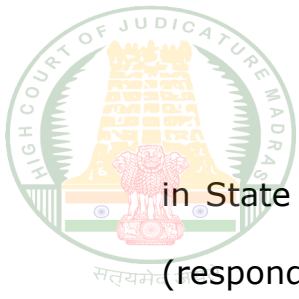
For RR 5 to 11 Notice dispensed with

ORDER

(made by M. SUNDAR, J.)

Captioned 'writ petition' [hereinafter 'WP' for the sake of brevity] has been filed with a Removal of Encroachment (RoE) prayer.

2. Mr. A. Rajakumar, learned counsel on record for writ petitioner on the Video Conference platform before us submits that encroachment is



in State Highway and that the alleged encroachers are private respondents (respondents 5 to 11).

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3. Repeated requests to official respondents (respondents 1 to 4) have not yielded results, *i.e.*, there is inaction is learned counsel's say.

4. Issue notice to official respondents.

5. Mr. T.K. Saravanan, learned Additional Government Pleader, accepts notice for official respondents (respondents 1 to 4). Learned State counsel draws our attention to a notice dated 25.11.2023 bearing reference 'Letter No.Encroachment/2023/U/' [hereinafter 'said notice' for the sake of convenience and clarity] and an order dated 26.02.2025 bearing reference 'Letter No.Encroachment/2023/U/' [hereinafter 'said order' for the sake of convenience and clarity] and submits that the private respondents (respondents 5 to 11) were visited with show cause notices (SCNs) under Section 28 of 'the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)' [hereinafter 'TN Highways Act' for the sake of convenience and clarity], they did not respond (to be noted, said notices are SCNs according to learned State counsel) and therefore, said order was made. It is also submitted that post said order, some of the private respondents, *viz.*,



respondents 8 to 11 have sent a representation dated 04.03.2025 (received by fourth respondent - Assistant Divisional Engineer, C & M, Highways Department on 05.03.2025).

6. This Court finds that the legal perimeter within which the captioned WP should perambulate is very limited and therefore, with the consent of learned counsel for writ petitioner and learned State counsel, captioned WP was taken up for hearing in the Admission Board itself dispensing with notice to private respondents (respondents 5 to 11). As regards private respondents (respondents 5 to 11), we make it clear that this order will not impact their rights in any manner and on the contrary, all the rights and contentions of private respondents (respondents 5 to 11) will stand preserved.

7. A careful perusal of said notice brings to light that it is not happily worded and it is not wholly in consonance with Section 28 of said TN Highways Act. To be noted, TN Highways Act stands amended on and from 07.03.2024 *vide* 'The Tamil Nadu Highways (Amendment) Act, 2024 (Act 11 of 2024)' [hereinafter 'amended TN Highways Act' for the sake of convenience and clarity] and the amended Section 28 reads as follows:



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'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.

(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)

8. The term 'Administrator' is a term of art having been defined *vide* Section 2(13) of the amended TN Highways Act which reads as follows:

- '2. Definitions.-- In this Act, unless the context otherwise requires, --
- (1)
 - (2)
 - (3)
 - (4)
 - (5)
 - (6)
 - (7)
 - (8)
 - (9)
 - (10)
 - (11)



(12)

(13) “Administrator” means the officer appointed under sub-section (2) of Section 5;'

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9. This takes us to Section 5(2) of the amended TN Highways Act which reads as follows:

'5. Appointment of Administrators.-- (1)

(2) The Divisional Engineer, Highways Department of the Government in-charge of each division, shall be the Administrator for that division.'

10. Learned State counsel now submits that fresh notices strictly in accordance with Section 28 read with Section 2(13) and Section 5(2) of the amended TN Highways Act would be sent to private respondents (respondents 5 to 11) as expeditiously as the business of official respondents permits but in any event within four weeks from today *i.e.*, on or before 10.09.2025.

11. As already alluded to *supra*, we make it clear that when private respondents (respondents 5 to 11) are visited with SCNs, all their rights and contentions are preserved to send a suitable reply *i.e.*, show cause, and all their rights and contentions in this regard are preserved. Thereafter, suitable order shall be made under proviso to Section 28(2)(ii) of amended TN Highways Act. The order so made shall be duly served on the private



respondents (respondents 5 to 11) within seven working days (under due acknowledgment) from the date of the order.

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12. Captioned WP stands disposed of in the aforesaid manner. There shall be no order as to costs.

(M.S., J.) (H.C., J.)
13.08.2025

cad

To

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