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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2025

CORAM:

THE HONOURABLE MR. JUSTICE M. SUNDAR

AND

THE HONOURABLE MR. JUSTICE HEMANT CHANDANGOUDAR

W.P.No.30674 of 2025 and W.M.P. No.34381 of 2025

S. Anjali

Petitioner

vs.

1. The District Collector
Tiruvallur District
Tiruvallur
2. The Sub-Divisional Engineer
Tiruvallur Sub Division
State Highways Department
Tiruvallur
3. The Assistant Engineer (Highways)
Construction & Maintenance
State Highways Department
Western Division
Tiruvallur
4. The Tahsildar
Uthukkottai Taluk
Uthukkottai
Tiruvallur District

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking
a writ of certiorarified mandamus to call for the records of the final notice



issued in Memo No.94/2025/U.Po dated 23.07.2025 on the file of the third respondent and quash the same and direct the respondents to conduct survey on the subject property.

For petitioner Mr. K. Balaji

For respondents Mr. A. Selvendran
Special Government Pleader

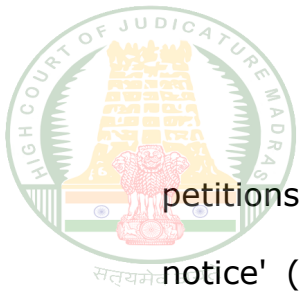
ORDER

(made by M. SUNDAR, J.)

Subject matter of captioned main 'writ petition' [hereinafter 'WP' for the sake of brevity] is land comprised in 'Survey No.481 in Pondhavakkam Village, Uthukottai Taluk, Tiruvallur District' [hereinafter 'said land' for the sake of convenience and clarity].

2. The writ petitioner was earlier visited with a 'notice dated 05.07.2025 bearing reference Memorandum No.94/2025/U.Po issued by third respondent (Assistant Engineer, Highways, Construction & Maintenance)' [hereinafter 'said earlier notice' for the sake of convenience and clarity] alleging encroachment in a Highway.

3. Writ petitioner assailed said earlier notice by way of a writ petition being W.P.No.25232 of 2025 and this very Bench, in and *vide* order dated 10.07.2025, disposed of the writ petition along with writ miscellaneous



petitions thereat, directing said earlier notice to be treated as a 'show cause notice' (SCN) within the meaning of Section 28(2)(ii) of 'the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)' [hereinafter 'said Highways Act' for the sake of convenience and clarity], so that the writ petitioner's response to SCN dated 07.07.2025 is considered and 'final orders' are made by authority or officer concerned under proviso to Section 28(2)(ii) of said Highways Act. The earlier order dated 10.07.2025 made by this Bench reads as follows:

'IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.07.2025

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE HEMANT CHANDANGOUDAR

W.P.No.25232 of 2025

and

W.M.P. No.28391 of 2023 in W.P. No.25232 of 2025

S.Anjali

... Petitioner

Vs.

1.The District Collector,
Tiruvallur District,
Tiruvallur.

2.The Sub Divisional Engineer,
Tiruvallur Sub Division,
State Highways Department,
Tiruvallur.

3.The Assistant Engineer (Highways),
Construction and Maintenance,
State Highways Department,
Western Division, Tiruvallur.

4.The Tahsildar,
Uthukottai Taluk,
Uthukottai, Tiruvallur District.

.. Respondents



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W.P.No.30674



Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the notice issued in Memo No.94/2025/U.Po dated 05.07.2025 on the file of the third respondent and quash the same.

For Petitioner : Mr.K.Balaji
For Respondents : Mr.K.Suresh,
Government Advocate
for R1 to R4

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 a 'notice dated 05.07.2025 issued by R3 [Assistant Engineer (Highways), Construction and Maintenance, State Highways Department, Western Division, Tiruvallur]' {hereinafter 'impugned notice' for the sake of brevity, convenience and clarity}.

2. Adverting to the impugned notice, Mr.K.Balaji, learned counsel for the writ petitioner, submitted that the impugned notice 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 three days, is learned counsel's say.

3. Issue notice. Mr.K.Suresh, learned Government Advocate accepts notice for all four respondents.

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 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



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W.P.No.30674



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 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 (SCN), the impugned notice issued by R3 directly states that in the event of failure of removal of encroachment by writ petitioner, encroachment will be removed.

7. It is also seen that the writ petitioner has responded to the impugned notice *vide* his detailed response dated 07.07.2025, a scanned reproduction of which is as follows:



அலுவலர் :
S. அருண்லி, ச/பெ. கப்பிரமணி,
எண். 1, குடியானவர் தெரு,
போத்தலாக்கம் கிராமம்,
ஊத்துக்கோட்டை வட்டம்,
திருவள்ளூர் மாவட்டம் - 602 026

தேதி : 07.07.2025

பெறுனர் :
1) உயர்திரு மாவட்ட ஆட்சியர் அவர்கள்,
திருவள்ளூர் மாவட்டம்
திருவள்ளூர்
2) உயர்திரு உதவி கோட்டப்பொறியாளர் அவர்கள்,
திருவள்ளூர் உட்கோட்டம்,
திருவள்ளூர் மாவட்டம்
3) உயர்திரு உதவி பொறியாளர் (நெ) க (ம) ப அவர்கள்,
மேற்கு பிரிவு, திருவள்ளூர்.
4) உயர்திரு வட்டாட்சியர் அவர்கள்,
ஊத்துக்கோட்டை வட்டம்,
திருவள்ளூர் மாவட்டம்,

ஐயா,
பொருள்: நெடுஞ்சாலைத்துறை 05.07.2025 நோட்டீஸ்க்கான
விளக்க மனு.

நான் மேற்கண்ட விலாசத்தில் நிரந்தரமாக வசித்து வருகிறேன்.
கடந்த 2018 ஆம் வருடம் P.T.பாஸ்கர் மற்றும் முனுசாமி அவர்களிடம்
இருந்து சர்வே எண்.476/4A2A எனும் நிலத்தை கிரையமாக பெற்று
நிரந்தர செட் அமைத்து அதில் என்னுடைய மகன்கள் அஞ்சலி ரூபிங்
அண்ட் ஸ்டீல்ஸ் எனும் கடையை நடத்தி வருகின்றனர். இந்த நிலத்திற்கு
வட்டாட்சியர் மூலம் பட்டா எண்: 9881 வழங்கப்பட்டது. நிலத்திற்கு
முறையாக சொத்துவரியும் செலுத்திவருகிறோம். கடந்த ஐந்து
மாதங்களுக்கு முன்பு ஊத்துக்கோட்டை 10 திருமழிசை சாலையானது
அகலப்படுத்தும் பணி தமிழக நெடுஞ்சாலைத் துறையால்

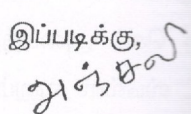
அகலப்படுத்தும் பணி



(24)

கொடுக்கப்பட்டது. எங்கள் நிலத்தின் முன்னால் இருக்கும் சாலையின் அகலம் குறைவாக உள்ளது என்று அரசாங்க சர்வேயர்களால் பலமுறை அளக்கப்பட்டது. அவ்வாறு அளந்த சர்வேயர்கள் என்னுடைய நிலம் FME பிரகாரம் உள்ளது என்று தெரிவித்தும், உறுதிபடுத்தியும் சென்றார்கள் மீண்டும் 16.06.2025 அன்று அளவிடு செய்ய வட்டாட்சியர் அலுவலகத்தில் இருந்து எங்களுக்கு கடிதம் மூலமாக தெரிவித்தார்கள். அன்று அளவிடு செய்து என்னுடைய இடத்தில் ஏதும் மாற்றம் இல்லை என்று கூறி சென்றார்கள். அத்துடன் எங்களுக்கு எதுவும் சொல்லாமல் கடந்த சனிக்கிழமை 05.07.2025 அன்று நாங்கள் சாலையை ஆக்கிரமிப்பு செய்துவிட்டோம் என்றும், அதை 3 நாட்களுக்குள் அகற்ற வேண்டும் என்று நோட்டீஸானது என்னுடைய கடை சுவரில் ஒட்டப்பட்டது அதை பார்த்து அதிர்ச்சி அடைந்தேன். நானும் என் குடும்பமும் மனஉளைச்சலுக்கு ஆளானோம். நாங்கள் இருப்பது என்னுடைய பட்டா நிலமாகும்.

எனவே தயவுள்ளம் கொண்ட ஐயா / அம்மா அவர்கள் மேற்படி எனக்கு சொந்தமான பட்டா சொத்தினை சர்வே செய்து, முறையாக அளந்து காட்டி உறுதி செய்ய வேண்டும் எனவும், அதுவரை தாங்கள் முன்னறிப்பின்றி 05.06.2025 அன்று கொடுத்த நோட்டீஸ் "நாங்கள் தவறும் பட்சத்தில் வருவாய் மற்றும் காவல்துறை உதவியுடன் ஆக்கிரமிப்பை 09.07.2025 அன்று அகற்றப்படும்" என்று தாங்கள் கொடுத்த நோட்டீஸ் மீது மேல் நடவடிக்கை எடுக்க வேண்டாம் என்று தாழ்மையுடன் கேட்டுக் கொள்கிறேன்.

இப்படிக்கு,

 S.அஞ்சலி



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

- i. Impugned notice shall be treated as a show cause notice (SCN) served on the writ petitioner today and the writ petitioner's representation dated 07.07.2025 in response to the impugned notice which is now directed to be treated as SCN, shall be considered on its own merits and in accordance with law by R3 and final orders shall be passed by R3 in accordance with proviso to Section 28(2)(ii) of said Act;
- ii. Final order so passed shall be served on the writ petitioner within five working days from the date of the final order;
- iii. If the final order to be passed by R3 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 R3 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 to be passed by R3 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 R3 under proviso to Section 28(2)(ii) of said Act; and
- 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, R3, 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. Consequently, captioned Writ Miscellaneous Petition (WMP) stands disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (H.C.,J.)
10.07.2025

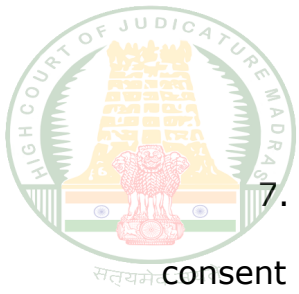
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Neutral Citation : Yes / No
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4. Mr. K. Balaji, learned counsel on record for writ petitioner submits that in writ petitioner's response to said earlier notice dated 07.07.2025, it was categorically mentioned that survey had been conducted in the presence of the writ petitioner and the authorities left saying that the writ petitioner's occupation is in accordance with the FMB sketch but notwithstanding this position, without conducting survey afresh, now, an order dated 23.07.2025 bearing reference Memorandum No.94/2025/U.Po captioned 'final order' has been made by third respondent (Assistant Engineer, Highways, Construction and Maintenance). To be noted, this 23.07.2025 order will hereinafter be referred to as 'impugned final orders' for the sake of convenience and clarity. The impugned final orders, having been made without conducting survey and on the teeth of earlier survey being in favour of writ petitioner, is bad, is writ petitioner counsel' say.

5. Issue notice to respondents.

6. Mr. A. Selvendran, learned Special Government Pleader, accepts notice for respondents and submits that survey was conducted, it was found that there is encroachment of Highway *qua* said Highways Act (within the meaning of Section 2 (12) of said Highways Act) and therefore, the impugned final orders was made.

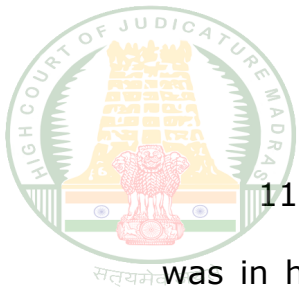


7. Considering the limited scope of the captioned main WP, with the consent of learned counsel on either side, captioned main WP was taken up for hearing in the Admission Board itself.

8. A careful perusal of writ petitioner's response dated 07.07.2025 to said earlier notice dated 05.07.2025 makes it clear that earlier survey, which, according to the writ petitioner was in his favour, pertains to Survey No.476/4A2A [hereinafter 'said another parcel of land' for the sake of convenience and clarity].

9. When this was pointed out, learned counsel for writ petitioner submitted that said another parcel of land is an adjacent land *qua* said land which is the subject matter of impugned final orders which has been made under proviso to Section 28(2)(ii) of said Highways Act.

10. Learned State counsel submits that the impugned final orders made by third respondent under proviso to Section 28(2)(ii) of said Act pertains to said land and implementation of impugned final orders will be with regard to said land and not said another parcel of land. This submission of learned State counsel is recorded.



11. In the light of the survey, which, according to the writ petitioner, was in his favour, being admittedly one pertaining to an adjacent piece of land, *i.e.*, said another parcel of land, we find no merit in the writ petitioner's case as the lone point raised by the writ petitioner in response to 05.07.2025 notice (construed as SCN *vide* 10.07.2025 order) has been duly addressed and answered.

12. As we find no infirmity in the impugned final orders of third respondent, the lone point on which writ petitioner's campaign against the impugned final orders was made (notwithstanding myriad grounds raised in the writ affidavit) fails.

13. *Ergo*, the sequitur is, captioned main WP fails and the same is dismissed. Consequently, captioned writ miscellaneous petition [hereinafter 'WMP' for the sake of brevity] thereat also perishes along with the captioned main WP *i.e.*, captioned WMP is also dismissed. There shall be no order as to costs.

(M.S., J.) (H.C., J.)
20.08.2025

cad
Index : Yes/No
NC : Yes/No

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To

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Tiruvallur District
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2. The Sub-Divisional Engineer
Tiruvallur Sub Division
State Highways Department
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M. SUNDAR, J.

and

HEMANT CHANDANGOUDAR, J.

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