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W.P.No.36139 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2025

CORAM

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

and

THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

W.P.No.36139 of 2024

N.Nirmal Kumar

... Petitioner

Vs.

- 1.The District Collector,
Kallakurichi District,
Kallakurichi.
- 2.The Revenue Divisional Officer,
Kallakurichi, Kallakurichi District.
- 3.The Tahsildar,
Kallakurichi, Kallakurichi District.
- 4.The District Superintendent of Police,
Kallakurichi District, Kallakurichi.
- 5.National Highways Authority of India
rep. By its Project Director,
Plot No.26, First Floor,
V.G.P. Nagar West,
Vazhudhareddy Post,
Villupuram District.

6.Suseela

7.Jegan

... Respondents

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WEB COPY Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus to direct the respondents 1 to 5 to forthwith remove the illegal encroachments made by the respondents 6 and 7 in the Government land in Survey Nos.219 and 220 at Ulangathan Village, Kallakurichi Taluk, Kallakurichi District by considering the passing necessary orders on the representation of the petitioner dated 03.09.2024.

For Petitioner : Mr.K.Selvaraj
For Respondents : Mr.T.K.Saravanan,
Additional Government Pleader
for R1 to R4
Ms.S.R.Sumathy for R5

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 with a prayer for issue of a writ of mandamus. To set out with specificity, prayer in the captioned main WP is to mandamus official respondents (R1 to R4) to remove alleged encroachment in 'Survey Nos.219 and 220 in Ulangathan Village, Kallakurichi Taluk, Kallakurichi District' (hereinafter 'said land' for the sake of convenience and clarity).



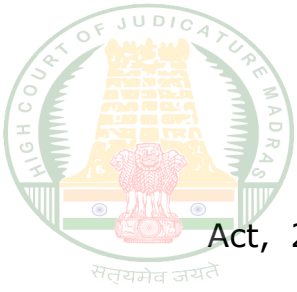
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2. Notice has already been issued to official respondents (R1 to R4). Mr.T.K.Saravanan, learned Additional Government Pleader for R1 to R4 and Ms.S.R.Sumathy, learned counsel for R5 are before us.

3. Mr.K.Selvaraj, learned counsel on record for writ petitioner submits that the writ petitioner has sent a representation dated 03.09.2024 (representation to R1) requesting removal of alleged encroachment in said land made by R6 and R7. This representation has not evoked any response and that has necessitated captioned WP is learned counsel's say.

4. Today, learned counsel for R5 submits that a counter affidavit has been filed on 04.02.2025. Learned counsel for R5 further submits that alleged encroachment is not in Survey Nos.219 and 220 but it is in 'Survey No.218 of Ulangathan Village, Kallakurichi Taluk, Kallakurichi District' (hereinafter 'encroached land' for the sake of convenience and clarity). It is also submitted that private respondents/R6 and R7 are alleged encroachers and notice under Section 26(2) of 'The Control of National Highways (Land and Traffic)



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Act, 2002 (Act 13 of 2003)' (hereinafter 'said Act' for the sake of brevity, convenience and clarity) has been issued.

5. Learned counsel for writ petitioner submits that access to his property has been obstructed by such encroachment and it will suffice if there is removal of encroachment irrespective of whether it is in said land or encroached land.

6. Reverting to notice under Section 26(2) of said Act, we find that a noticee who is visited with such a notice can send a representation and if there is such a representation, place and time for hearing said representation should be fixed. Therefore, we are making it clear that all the rights and contentions of R6 and R7 stand preserved. All questions are left open. This means that we are not making any order touching upon rights of R6 and R7 much less an order adverse to R6 and R7. Therefore, we dispense with notice to R6 and R7 and take up the main WP in the Admission Board with the consent of learned State counsel and learned counsel for writ petitioner.



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7. Reverting to the notice under Section 26(2) of said Act, we find from the provision that such a notice should be issued either by 'Highway Administration' or 'an officer authorised by highway administration'. To be noted, Highway Administration is defined vide Section 2(f) and the same takes us to Section 3 of said act which read as follows:

'2.Definitions. - In this Act, unless the context otherwise requires, -

- (a)
- (b)
- (c)
- (d)
- (e)

(f) "Highway Administration" means the Highway Administration established under section 3;

'3.Establishment of Highway Administrations:- (1)*The Central Government shall, by notification in the Official Gazette, -*

(a)establish, for the purposes of this Act, a body or authority consisting of one or more officers of the Central Government or the State Government to be known as Highway Administration to exercise powers and discharge functions conferred on it under this Act; and



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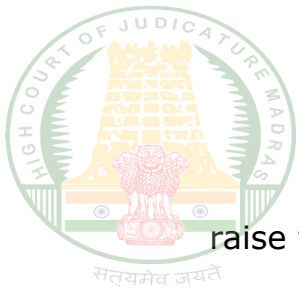
(b) define the limits of the Highway within which, or the length of Highway on which, a Highway Administration shall have jurisdiction:

Provided that the Central Government may, in the notification issued under this sub-section or by any general or special order, impose any condition or limitation subject to which a Highway Administration shall exercise powers and discharge functions conferred on it under this Act.

(2) The Central Government may establish one or more Highway Administrations for a State or Union territory or for a Highway under sub-section (1).

(3) Subject to the provisions of this Act, the Highway Administration shall exercise powers and discharge functions conferred on it under this Act in such manner as may be prescribed.'

8. Learned counsel for R5 submits that the deponent of the counter affidavit viz., Project Director, National Highways Authority of India, PIU - Villupuram is competent to issue notice under Section 26(2) vide Section 2(f) read with Section 3 of said Act. This submission is recorded but we express no opinion one way or the other on the same as we are leaving open this question also. This question being left open means that it will be open to the noticee to



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raise this point also if it is available to the noticee.

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9. To be noted, Mr.T.K.Saravanan, learned Additional Government Pleader for R1 to R4 submits that alleged encroachment is in a National Highway {NH, to be precise NH 68 (now NH79)} from Salem to Ulundurpet. R1 to R4 would merely cooperate and render assistance to R5. This submission is also recorded.

10. Though obvious, for the sake of specificity, we further make it clear that if there is any representation from the noticees more particularly private respondents R6 and R7, the same shall be considered on its own merits and in accordance with law untrammelled by any observations in this order. Therefore, we reiterate that this order does not touch upon the rights of the private respondents much less is it adverse to the private respondents. We also express no opinion or view on alleged encroachment but let the notice under Section 26(2) of said Act dated 07.12.2024 proceed in accordance with law on its own merits. Let the proceedings be concluded one way or other as expeditiously as the business of official respondents would permit.

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

(M.S.,J.) (K.G.T.,J.)
13.03.2025

Index : Yes / No
Neutral Citation : Yes / No
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To

- 1.The District Collector,
Kallakurichi District,
Kallakurichi.
- 2.The Revenue Divisional Officer,
Kallakurichi, Kallakurichi District.
- 3.The Tahsildar,
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**and
K.GOVINDARAJAN THILAKAVADI, J.,**

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