



W.P.No.36394 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 18.03.2025

CORAM

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

and

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

W.P.No.36394 of 2023

and

W.M.P. Nos.36396 of 2023 and 26568 of 2024 in W.P.No.36394 of 2023

G.Andal

... Petitioner

Vs.

- 1.The Divisional Engineer (Highways),
Construction and Maintenance,
Thiruvallur Division, Thiruvallur.
- 2.The Assistant Divisional Engineer (Highways),
Construction and Maintenance,
Ambattur Sub Division,
Avadi, Chennai – 600 054.
- 3.The Junior Engineer (Highways),
Construction and Maintenance,
Ambattur, Chennai – 600 053.
- 4.The District Collector,
Thiruvallur District,
Thiruvallur – 602 001.
- 5.The Revenue Divisional Officer,
Ponneri Revenue Division,
Ponneri – 601 204.

Page Nos.1/17



W.P.No.36394 of 2023

WEB COPY

6. The Tahsildar,
Ponneri Taluk,
Ponneri – 601 204.

... 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 of the second respondent and quash the impugned Notice No.807/C2/2023 dated 19.12.2023 of the second respondent as ultra vires, arbitrary, unconstitutional, illegal, invalid and against all principles of law and natural justice and consequentially forbearing the respondents from demolishing the structures, buildings and houses and other commercial establishments of the petitioner and disconnecting electric service connection of the petitioner's premises and buildings all situate in old Paimash No.747/B, in S.No.135/6 as per Patta No.1918 issued in the name of the petitioner bearing Door Nos.2/540, 2/542 and 2/544, Thiruvallur Road and Door Nos.2/546-1 to 2/546-18 (1 to 18), GNT Road, Padiyanallur, Chennai – 600 052 but claimed to be S.No.136/1 in the impugned notice of the second respondent.



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W.P.No.36394 of 2023

For Petitioner : Mr.V.Raghavachari,
Senior Counsel
for Mr.N.R.Anantha Rama Krishnan

For Respondents : Mr.T.K.Saravanan,
Additional Government Pleader

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 certiorarified mandamus. Certiorari limb of the prayer assails a 'notice dated 19.12.2023 bearing reference தாக்கீது எண்.807/சு2/2023 issued by R2 [Assistant Divisional Engineer (Highways), Construction and Maintenance, Ambattur Sub Division, Avadi, Chennai – 600 054]' (hereinafter 'impugned notice' for the sake of convenience and clarity). Mandamus limb is a consequential prayer seeking a mandamus to forbear the respondents from taking coercive action pursuant to impugned notice i.e., coercive action such as demolition of structures, disconnection of electricity service connection etc.,

2. A scanned reproduction of the impugned notice is as follows:



W.P.No.36394 of 2023

உதவிக் கோட்டப் பொறியாளர்(நெ) (க(ம)ப), அலுவலகம்,
அம்பத்தூர் உட்கோட்டம், ஆவடி.

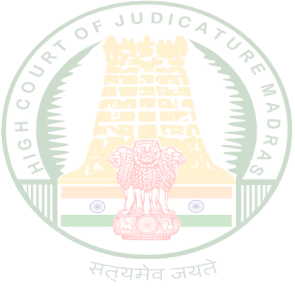
எண். 807/சி2/2023/நாள். 19.12.2023.

பொருள்: நெடுஞ்சாலைத்துறை - அம்பத்தூர் (நெ) க(ம)ப, உட்கோட்டம் -
ஜி.என்.டி சாலை கி.மீ.18/8-ல் - திருவாளர்.ஜி.வீ. சர்வீஸ் ஸ்டேசன்,
திரு.எம்.வி. பாலகும்பார், அவர்களால் மாண்புமிகு சென்னை
உயர்நீதி மன்றத்தில் வழக்கு எண். W.P.No.10803/2023 மற்றும்
தொடரப்பட்ட நாள்.06.04.2023 வழக்கு. அரசுக்கு சொந்தமான
இடத்தில் ஆக்கிரமிப்பு செய்துள்ள பகுதிகளை அகற்ற தாக்கீது
வழங்குதல் -தொடர்பாக.

1. வட்டாட்சியர், பொன்னேரி அவர்கள் ந.க.எண்.1804/2023/அ1.
நாள்.07.11.2023
2. இந்நிலை பொறியாளர்(நெ) க(ம)ப., அம்பத்தூர் அவர்களின்
கடித எண்.25/இநிபொ/ 2023/ நாள்.19.12.2023

திருவள்ளூர்(நெ) க(ம)ப, கோட்டம், அம்பத்தூர் (நெ) க(ம)ப.,
உட்கோட்டத்திற்குட்பட்ட அம்பத்தூர்(நெ) க(ம)ப., பிரிவை சார்ந்த மாநில
நெடுஞ்சாலையான ஜி.என்.டி சாலை கி.மீ.18/8-ல் புல.எண்: 136/1-ல் உள்ள
நெடுஞ்சாலைத் துறைக்கு சொந்தமான இடத்தில் தாங்கள் H.P. Petrol Bank (M/S. Gee Vee
Service Station) பரப்பு 0.19.50 ஏர்ஸ்-ல் பெட்ரோல் நிரப்பும் நிலையம் மற்றும் 17 கடைகள்
வளக்கிடம் கட்டிய ஆக்கிரமிப்பு செய்யப்பட்டுள்ளதால், இதன் தொடர்பாக பார்வை 1
மற்றும் 2ல் காணும் கடிதங்களின்படி தெரிவித்துள்ளவாறு ஆக்கிரமிப்பு செய்துள்ள இடம் கிராம
வளக்கிடப் புல எண் 136/1 பரப்பு 0.19.50 ஏர்ஸ் இடமானது சாலை புறம்போக்கு என தாக்காலாகி
யிருந்து தெரிவித்துள்ளார்கள்.

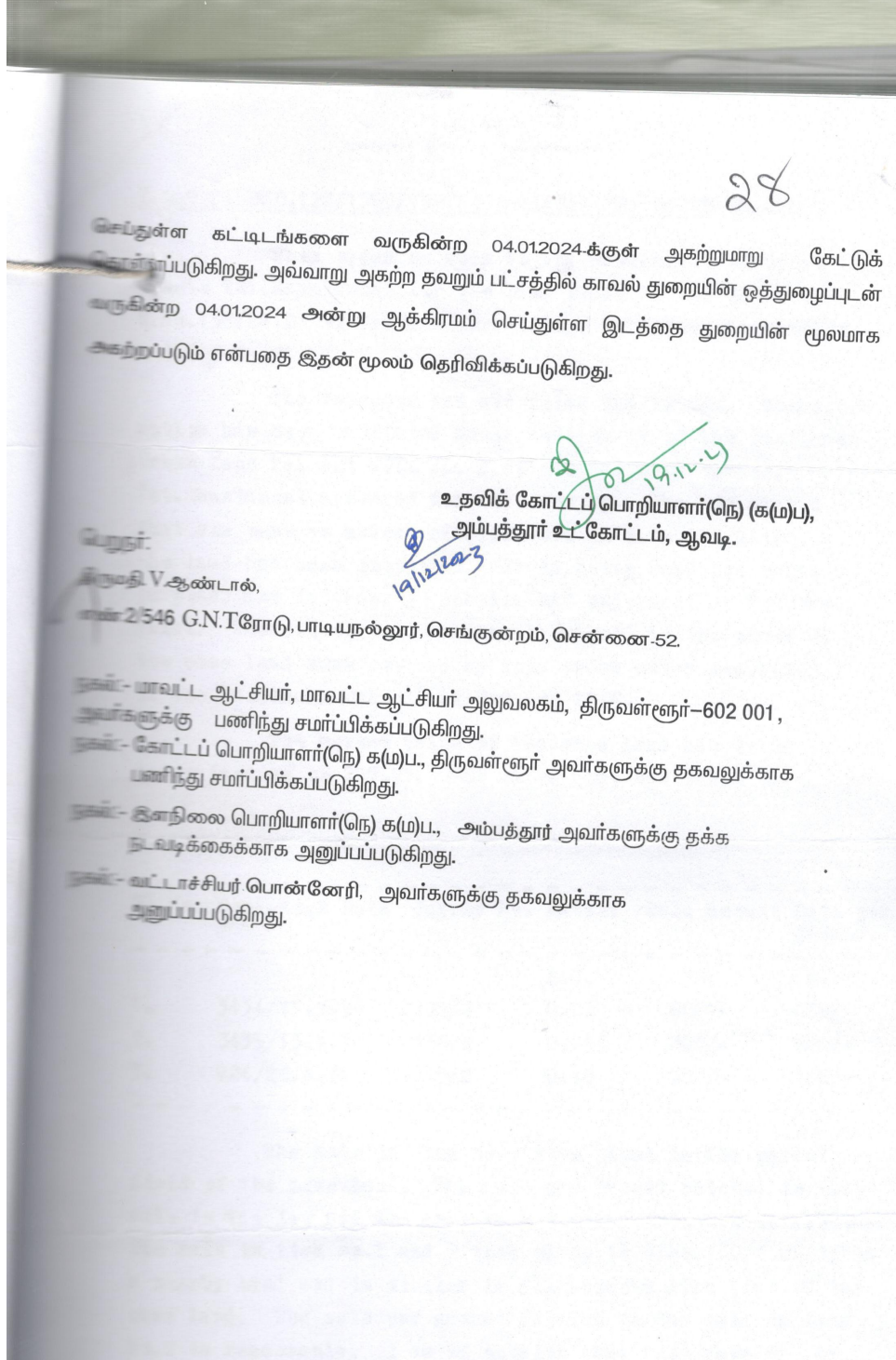
எனவே தாங்கள் அரசுக்கு சொந்தமான இடத்தை ஆக்கிரமம் செய்துள்ளதால் இத்தாக்கீது
பெற உடன் தாங்களே முன்வந்து அரசுக்கு சொந்தமான இடத்தில் ஆக்கிரமம்



WEB COPY



W.P.No.36394 of 2023





W.P.No.36394 of 2023

WEB COPY

3. Adverting to the aforementioned impugned notice, Mr.V.Raghavachari, learned senior counsel appearing on behalf of /instructed by learned counsel on record for writ petitioner Mr.N.R.Anantha Rama Krishnan submitted that the writ petitioner has not been show caused.

4. Mr.T.K.Saravanan, learned Additional Government Pleader appearing for all the respondents submitted on instructions that the impugned notice has been issued under Section 28 of 'The Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)' [hereinafter 'said Act' for the sake of convenience and clarity] as according to learned State counsel, there is encroachment.

5. We carefully considered the submissions made by both sides.

6. Section 28 of said Act 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



W.P.No.36394 of 2023

WEB COPY

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 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.'



W.P.No.36394 of 2023

WEB COPY

7. There is no dispute before this Court that what is sought to be removed as an encroachment in the case on hand is an immovable structure. Therefore, Section 28(2)(ii) of said Act and the proviso thereat come into play. This means that the writ petitioner ought to be show caused vide a Show Cause Notice (SCN) returnable in seven days and if any representation is made within seven days time frame, the same shall be considered by the authority or officer concerned and 'final orders' have to be made.

8. Therefore, this Court is of the considered view that it will serve the ends of justice if the impugned notice is not dislodged but it is directed to be treated as an SCN within the meaning of Section 28(2)(ii) of said Act, permit the writ petitioner to respond within seven days from today and make it clear that the authority or officer concerned shall pass 'final orders' after considering such representation. Before we write the operative portion of the order in this regard, we deem it appropriate to write that Section 28 notice can be issued either by a 'Highways Authority' or 'any person authorised by it'. Highways Authority is defined vide Section 2(13) of said Act which takes us to Section 5(2) which read as follows:



W.P.No.36394 of 2023

WEB COPY

Section 2(13) of said Act:

'2(13): *"Highways Authority" means the officer appointed under sub-section (2) of Section 5.'*

Section 5 of said Act:

'5. Appointment of Highways

Authorities.-

(1)

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

9. This means that R1 is the Highways Authority. This Court wanted to know from the learned State counsel if R1 has authorised R2 to issue the impugned notice and learned State counsel placed before us the following proceedings:



WEB COPY



W.P.No.36394 of 2023

Office of the Divisional Engineer (H), (C&M),
Thiruvallur Division, Thiruvallur.

Memo No. 1957/2023/Nir-2/Dated: 13.10.2023.

SUB: Thiruvallur (H), C&M Division – Ambathur (H), C&M Sub Division
– CRIDP scheme/2022-23 works – Removal of Encroachments –
Authorize to issue necessary notices to the encroachers –
Regarding.

REF: G.O. Ms.No.191, Highways and Minor Ports (HF2) Department,
Dated.29.09.2022.

With reference to the above, I hereby authorize to issue notice and evict the encroachments after following due procedure from the Right Of Way (ROW) and keep the site free of hindrance, in the following works,

1. Construction of Drain at Km.17/250 – 17/750 (Both sides) of Grand Northern Trunk road (Redhills junction) including providing paver blocks end to end.
2. Construction of Drain at Km.17/750 – 18/200 (Both sides) of Grand Northern Trunk road (Redhills junction) including providing paver blocks end to end.
3. Construction of Drain at Km.18/2 – 18/6 (Both sides) of Grand Northern Trunk road (Redhills junction) including providing paver blocks end to end.

In this regard, the Assistant Divisional Engineer (H), C&M Ambathur is requested* to take necessary action.

[Signature] (13.10.2023)
Divisional Engineer (H),
C&M, Thiruvallur.

To,

The Assistant Divisional Engineer (H), (C&M), Ambathur



W.P.No.36394 of 2023

WEB COPY

10. We make it clear that it is open to the writ petitioner to raise the competence issue also and we add in the same breath that we have not expressed any view one way or the other on the competence of R2 to issue a SCN.

11. Another point is, a notice under Section 28(2)(ii) of said Act can be issued with regard to 'Highway' or 'area vested with Government under the said Act'. Learned State counsel submits that the case on hand is one of Highway. Highway is defined vide Section 2(12) which takes us to Section 3 which read as follows:

'Section 2(12) of said Act :

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

- (1)
- (2)
- (3)
- (4)
- (5)
- (6)
- (7)
- (8)
- (9)
- (10)



WEB COPY



W.P.No.36394 of 2023

(11)

'(12) "highway" means any road, way or land which is declared to be a highway under section 3 and includes--

- (a) all land appurtenant thereto, whether demarcated or not;
- (b) the slope, berm, burrow pits, foot paths, pavement, whether surfaced or unsurfaced;
- (e) all bridges, culverts, causeways, carriage ways or other structures built on or across such road or way;
- (d) the foot-way attached to any road, public bridge or causeway;
- (e) the drains attached to any such street, public bridge or causeway and the land, whether covered or not by any pavement, verandah or other structure, which lies on either side of the roadway up to the boundaries of the adjacent property, whether that property is private or property belonging to the Central Government or any State Government; and
- (f) all fences, trees, posts and boundaries, hectometer and kilometer stones and other highway accessories and materials stacked on such road or public bridge or causeway, but does not include a National Highway declared as such by or under the National Highways Act, 1956 (Central Act 48 of 1956).'

Section 3 of said Act:

'3.Declaration of roads, ways or lands as highways.- On the recommendation made by the State Highways Authority, the Government may, by notification, declare any road, way or land to be highway and classify it as any one of the following, namely:-



WEB COPY



W.P.No.36394 of 2023

- (i) a State Highway;
- (ii) a major district road;
- (iii) other district road; or
- (iv) a village road:

Provided that where such road, way or land whether in whole or in part is owned by any local authority, such notification shall be issued with the concurrence of that local authority by a resolution passed by it in this behalf.'

12. The above question as to whether the alleged encroachment is in highway within the meaning of said Act is also left open.

13. In the light of the narrative discussion and dispositive reasoning set out supra, the following order is made:

13.1 The impugned notice is not dislodged/set aside i.e., writ of certiorari is not issued but the impugned notice shall now be construed as SCN within the meaning of Section 28(2)(ii) of said Act;

13.2 Aforementioned SCN shall be construed to have been served on the writ petitioner today (18.03.2025);



W.P.No.36394 of 2023

WEB COPY

13.3 Writ petitioner can send a representation if so advised and if so desired within seven days from today i.e., on or before 25.03.2025;

13.4 If the writ petitioner sends a representation within seven days from today, the authority or officer concerned shall consider the same and pass 'final orders' within the meaning of proviso to Section 28(2)(ii) of said Act;

13.5 'Final orders' so passed shall be served on the writ petitioner under due acknowledgment within five working days from the date on which the order is made;

13.6 Any coercive action be it demolition of structures, disconnection of electricity service connection or any other form of coercive action, the same will be subject to and depending on orders to be made in the aforesaid manner;

13.7 If the writ petitioner does not send a representation within seven days from today i.e., on or before 25.03.2025, it is open to the respondents to proceed further in accordance with law pursuant to the impugned notice;



W.P.No.36394 of 2023

WEB COPY

13.8 In the representation of the writ petitioner (if sent), the aforementioned questions which are left open can be raised and the same shall be considered by the authority or officer concerned in making 'final orders'.

14. Captioned main WP is disposed of in the aforesaid manner. As we have made it clear that any coercive action will be subject to and depending on 'final orders' to be made by the authority or officer concerned under proviso to Section 28(2)(ii) of said Act, the injunction WMP becomes otiose and the same is disposed of closed. Axiomatically, vacate injunction petition is also disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
18.03.2025

Index : Yes / No
Neutral Citation : Yes / No
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W.P.No.36394 of 2023

WEB COPY

To

- 1.The Divisional Engineer (Highways),
Construction and Maintenance,
Thiruvallur Division, Thiruvallur.
- 2.The Assistant Divisional Engineer (Highways),
Construction and Maintenance,
Ambattur Sub Division,
Avadi, Chennai – 600 054.
- 3.The Junior Engineer (Highways),
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WEB COPY



W.P.No.36394 of 2023

**M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

mmi

W.P.No.36394 of 2023

18.03.2025

Page Nos.17/17