



W.P.No.38200 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2025

Coram

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

and

THE HONOURABLE MR.JUSTICE **K.RAJASEKAR**

W.P.No.38200 of 2024

&

W.M.P No.41321 of 2024

in

W.P.No.38200 of 2024

S.Nagarathinam

W/o.P.Selladurai (Late)

.. Petitioner

VS

1. The District Collector

Tiruppur District

at Tiruppur

2. The Revenue Divisional Officer

Dharapuram Revenue Division

Tiruppur District

3. The Tahsildar

Dharapuram Taluk

Dharapuram, Tiruppur District



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4. The Divisional Engineer
State Highways Department
Alangiam Road, Dharapuram
Tiruppur District

5. The Assistant Divisional Engineer
State Highways Department
Alangiam Road, Dharapuram
Tiruppur District

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to the impugned proceedings in Na.Ka.No.24178/2023/A2 dated 05.12.2024 issued by the 1st respondent and the consequential impugned Eviction Notice issued by the 5th respondent dated -nil- singed on 06.12.2024 and quash the same and consequently transfer the petitioner's appeal dated 30.09.2024 pending on the file of 2nd respondent /RDO to the file of any other Officer of competent jurisdiction.

For Petitioner : Mr.K.Premkumar

For Respondents : Mr.T.K.Saravanan
Government Advocate
for R1 to R5



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ORDER

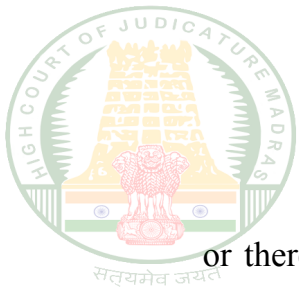
(Order of the Court was made by M.SUNDAR, J.)

Captioned writ petition has been filed inter alia assailing an 'order 05.12.2024 bearing reference ந.க.24178/2023/ஆ2 made by R1' [hereinafter 'impugned transfer order' for the sake of convenience] and a 'notice signed on 06.12.2024 by R5 with the caption that it is under Section 28 of Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)' {hereinafter 'impugned eviction notice' for the sake of convenience}. 'Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)' shall be referred to as 'State Highways Act' for the sake of convenience and clarity.

2. Mr.K.Premkumar, learned counsel for sole writ petitioner and Mr.T.K.Saravanan, learned State counsel for the five respondents are before us.

3. The main writ petition was taken up with the consent of learned counsel on both sides.

4. Subject matter of main writ petition is 'land comprised in R.S.No.1071/18 (Old Survey No.394A2, 626/2) admeasuring 0.01.50 hectares



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or thereabouts in 36.Kundadam Village, Dharapuram Taluk, Tiruppur District'

[hereinafter 'said land' for the sake of convenience].

5. In and by the impugned transfer order, R1 has considered the position that State Highways has requisitioned said land for extension of Highway from Dharapuram to Palladam and has acceded to the request. In and by the impugned eviction notice, R5 has called upon the writ petitioner to remove the alleged encroachment within seven days.

6. Learned counsel for writ petitioner submits that said land is patta land and that patta stands in the name of petitioner's father-in-law.

7. Learned counsel for writ petitioner fairly submitted that there is no objection for acquisition of said land but the petitioner has to be paid in accordance with Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is his further say.

8. In response to the above argument, learned State counsel submitted that said land is not patta land as the writ petitioner's request for patta was negatived by R3 (jurisdictional Tahsildar) vide proceedings dated 30.08.2024 bearing reference ந.க.4935/2023/அ2. The same was assailed by writ



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petitioner and R2 (Revenue Divisional Officer, Dharapuram Revenue Division, Tiruppur District) dismissed the appeal also vide order dated 18.11.2024. To be noted, learned counsel for writ petitioner submitted that this order of R2 has not been served on the writ petitioner.

9. In the light of the stated position of the parties, this Court is of the considered view that it will serve the ends of justice if the impugned eviction notice of R5 is treated as a 'show-cause notice' ['SCN' for the sake of convenience] and writ petitioner is given seven (7) days time to respond to SCN *inter alia* raising the issue that 18.11.2024 order of R2 has not been served on the writ petitioner.

10. Before we write the operative portion of this order, we deem it appropriate to set out the relevant part of the statutory scheme. Section 28 of State Highways Act reads as follows:

'28. (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



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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.'

11. In the case on hand, we are concerned with Section 28(2)(ii) and the proviso thereat.



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12. 'Highways Authority' is defined vide Section 2(13) of State

Highways Act, which takes us to Section 5(2). Sections 2(13) and 5(2)

of State Highways Act read as follows:

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

'Section 5(2) The Divisional Engineer, Highways Department of the Government in-charge of each division, shall be the Highways authority for that division.'

13. A conjoint reading of Sections 2(13) and 5(2) brings to light that R4 is Highways Authority. However, in the light of the language in which Section 28 is couched, a notice under Section 28 can be issued either by the Highways Authority or by any other person authorised by it.

In the case on hand, learned State counsel submits that R4 has authorised R5 and therefore, R5 has issued the impugned eviction notice.

This submission is recorded.

14. This Court having set out the relevant statutory scheme after a case narrative, discussion and dispositive reasoning makes the following



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order:

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i) As the impugned eviction notice of R5 is consequential qua impugned transfer order of R1, these two notices shall now collectively be treated as a SCN under Section 28(1)(ii) of State Highways Act;

ii) Writ petitioner shall send a reply to SCN by way of representation within 7 days from today i.e., by 16.01.2025, if so advised and so desired;

iii) If representation is sent by the writ petitioner in the aforesaid manner, R5 shall consider the same and pass final orders which shall be in tune with proviso to Section 28(2)(ii) of State Highways Act;

iv) For the aforesaid legal drill, all the rights and contentions of all the parties are left open;

v) If the writ petitioner does not send a response to SCN by way of representation within seven days, it will be open to



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respondents to proceed with the matter in accordance with law;

vi) Though obvious, we make it clear that further action will be subject to final orders to be made by R5 in the aforesaid manner.

Captioned writ petition disposed of in the aforesaid manner with the above mentioned directives / observations. Consequently, captioned writ miscellaneous petition thereat is disposed of as closed. There shall be no order as to costs.

[M.S., J]

[K.R.S., J]

09.01.2025

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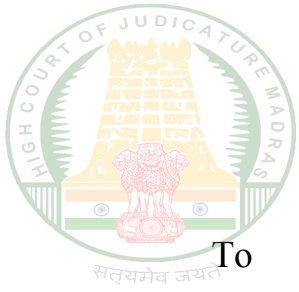
Index: Yes/No

Speaking order / Non-speaking order

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P.S.II : All concerned including Registry of Madras High Court to act forthwith on the uploaded soft copy of this proceedings as uploaded in the official website of this Court. To be noted, the soft copies uploaded in the official website of this Court are water marked, besides being QR Coded.



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To

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