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W.P. No.38421 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2025

CORAM:

THE HON'BLE MR. JUSTICE M. SUNDAR
AND
THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. No.38421 of 2024 & W.M.P. No.41612 of 2024

S. Lingakumar

Petitioner

vs.

1. The District Collector
Office of the District Collector
Coimbatore 641 018
2. The District Revenue Officer
Collectorate
Coimbatore 641 018
3. The Sub-Collector
Office of the Sub-Collector
Pollachi
4. The Tahsildar
Office of the Tahsildar
Anamalai 642 104
5. The Assistant Divisional Engineer
Highways Department
(Construction & Maintenance)
Vaalparai Sub-Division
Minparai Post
Attagatti 642 101
6. The Executive Officer
Kottur Town Panchayat
Kottur
Malaiyandipattinam
Pollachi 642 114



7. R. Selvakumar

Respondents

Writ Petition filed under Article 226 of the Constitution of India

seeking a writ of certiorari calling for the records on the file of the fifth respondent in respect of the final show cause notice *vide* கு,எண்-18/2023/இ.வ.தொ.அ/நாள்- 02.12.2024 and to quash the same as illegal and arbitrary.

For petitioner Mr. S. Nagarajan

ORDER

(made by M. SUNDAR, J.)

When the captioned 'writ petition' ('WP' for the sake of brevity) was taken up, Mr. S. Nagarajan, learned counsel for writ petitioner, Mr.T.K. Saravanan, learned Government Advocate appearing for RR 1 to 5 and Mr. A.M. Ayyadurai, learned Government Advocate appearing for R6 submitted in one voice that the captioned matter is directly and squarely covered by order of this Court dated 19.12.2024 made in W.P.No.38184 of 2024 and W.M.P. thereat which reads as follows:

'Captioned main 'writ petition' ('WP' for the sake of brevity) is the second round of litigation in this Court. The first round is *vide* W.P.No.15675 of 2024 which came to be disposed of on 18.06.2024 by a Division Bench of this Court to which one of us (M. SUNDAR, J.) was a party.

2. Mr. S. Nagarajan, learned counsel for writ petitioner, is before us in the Admission Board.

3. Short facts, shorn off elaboration, which is not necessary for appreciating this order are:



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i. that proceedings were initiated against writ petitioner under 'Tamil Nadu Highways Act, 2001 (Act 34 of 2002)' (for the sake of brevity 'TN Highways Act') *inter alia* by issue of a notice dated 09.05.2024 styled 'show cause notice' ('SCN' for the sake of brevity);

ii. that this SCN called upon the writ petitioner to remove the encroachment without show causing him;

iii. that this 09.05.2024 SCN was issued under Section 28(2)(ii) of TN Highways Act;

iv. that Section 28(2)(ii) of TN Highways Act specifically provides for show causing the noticee and also passing final orders on any representation if it is received within the show cause period of seven days;

v. that therefore, in and by aforesaid 18.06.2024 order (in W.P. No.15675 of 2024), this 09.05.2024 SCN was set aside with liberty to the respondents to issue fresh SCN in accordance with law under Section 28(2)(ii) of TN Highways Act;

vi. that it comes to light that R5 (Executive Officer, Kottur Town Panchayat), pursuant to orders of this Court, has issued a fresh SCN dated 24.06.2024;

vii. that it further comes to light that in response to fresh SCN, the noticee/writ petitioner has sent a detailed representation dated 29.06.2024;

viii. that based on the fresh SCN dated 24.06.2024 and the writ petitioner's representation in response to the SCN being representation dated 29.06.2024, R5 has now made an order dated 02.12.2024 bearing கு.எண்-18/2023/இவதொது ('impugned order' for the sake of clarity and convenience);

ix. that assailing the impugned order, captioned main WP has been filed with certiorari prayer; and

x. that the matter is in the Admission Board and Mr. S. Nagarajan, learned counsel for writ petitioner is before us in the Admission Board (as already alluded to *supra*).

4. This Court, having set out short facts and having captured the trajectory the matter has taken *qua* the earlier round of litigation in this Court, proceeds to consider the captioned WP in the Admission Board.

5. At the outset, this Court deems it appropriate to make it clear that aforesaid fresh SCN dated 24.06.2024 (issued pursuant to



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earlier order dated 18.06.2024 made in W.P. No.15675 of 2024) and the writ petitioner's response to the same by way of a representation dated 29.06.2024 have not been placed before this Court though the same have been clearly referred to in the impugned order *vide* serial nos. (2) and (3) respectively of reference. For the sake of clarity and specificity, we deem it appropriate to extract and reproduce the impugned order, we do so and the same is as follows:

**உதவிக்கோட்டப் பொறியாளர்(நெ) அலுவலகம்,
கட்டுமானம் (ம) பராமரிப்பு, உட்கோட்டம் வால்பாறை.**

இறுதி அறிவிப்பாணை

Show Cause Notice

(Issued Under Chapter V, Sec.28 (2) (ii) of Tamil Nadu Highways Act 2001)

கு.எண் -18 / 2023 / இவ்வொ.அ / நாள் - 02.12.2024

பொருள் :- நெடுஞ்சாலைத்துறை - பொன்ளாச்சி(நெ) க(ம)ப கோட்டம் - வால்பாறை (நெ) க(ம)ப உட்கோட்டம் - வால்பாறை (நெ) க(ம)ப பிரிவு அங்கலக்குறிச்சி - சங்கம்பாளையம் சாலை கி.மீ. 0/0 -2/0-இல் இடது புறம் சாலையை ஆக்கிரமித்துள்ள சுற்றுச்சுவர் பகுதி - அகற்றிக் கொள்ளுதல் - இறுதி அறிவிப்பாணை வழங்குதல்- தொடர்பாக.

பார்வை :- 1)மான்பலம் சென்னை உயர்நீதிமன்ற நீதிப்பேராணை எண்:W.P. 5266 / 2023/ உத்தரவு / நாள் 20.06.2023 எண்:W.P. 3985 / 2024/ உத்தரவு / நாள் 21.02.2024, W.P.No.15675/2024 உத்தரவு நாள் 18.06.2024 & 19.07.2024 மற்றும் W.P.No.15705/2024 உத்தரவு நாள் 19.06.2024.
2) இவ்வலுவலக கு.எண்.18/2023/இவ்வொ.அ/ நாள் 29.12.2023, 09.05.2024 மற்றும் 24.06.2024
3)தங்கனது வீனக்க கடித நாள் 29.06.2024.

பார்வை(1)-இல் கண்டுள்ள மான்பலம் சென்னை உயர்நீதிமன்ற உத்தரவுகளின்படி வால்பாறை நெடுஞ்சாலை உட்கோட்டத்தின் கட்டுப்பாட்டிலுள்ள மாவட்ட இதர சாலையான அங்கலக்குறிச்சி - சங்கம்பாளையம் சாலை கி.மீ. 0/0 -2/0-இல் இடது புறம் வகுவாய்த்துறை ஆணைங்களின்படி சாலையை ஆக்கிரமிப்பு செய்து பொதுமக்கள் மற்றும் வாகனங்களின் போக்குவரத்திற்கு இடையூறு ஏற்படும் வகையில் நெடுஞ்சாலையில் புலனணி 1758-இல் அந்தமீறி கட்டப்பட்டுள்ள சுற்றுச் சுவர் பகுதியை ஒன் அகற்றிக் கூடாது என்பதற்கான தகுந்த காரணத்தை தெரிவிக்க கோரி பார்வை (2)-இல் கண்டுள்ளவாறு ஆக்கிரமிப்பு அகற்றுவதற்கான அறிவிப்பு வழங்கப்பட்டது.

பார்வை (3)-இல் கண்டுள்ள தங்கனது கடிதத்தில் ஆக்கிரமிப்பு செய்துள்ள சமர்ந்தப்பட்ட புல எண்ணிக்கான இடம் தங்களுக்கு சொந்தமானது என்பதற்கான வகுவாய்த்துறை ஆணைங்கள் ஏதும் சமர்ப்பிக்கப்படவில்லை. எனவே வகுவாய்த்துறை ஆணை அளவிடுகளின்படி, நெடுஞ்சாலைத் துறையால் ஆக்கிரமிப்புகள் அகற்றப்பட்டு, அதற்குண்டான செலவுத்தொகை நங்கனிடம் வசூலிக்கப்படும். ஆக்கிரமிப்பு அகற்றப்படும் போழுது ஏற்படும் சேதங்களுக்கு நெடுஞ்சாலைத்துறை எவ்விதத்திலும் பொறுப்பு ஏற்காது என்றும் தெரிவிக்கப்படுகிறது. இந்த தாக்கீது தமிழ்நாடு நெடுஞ்சாலைகள் சட்டம் 2001/ பிரிவு 5-ன், உட்பிரிவு 28(2) (ii) -ன் கீழ் அனுப்பப்படுகின்ற இறுதி அறிவிப்பாகும்.

**உதவிக்கோட்டப்பொறியாளர் (நெ),
க(ம)ப, வால்பாறை.**

பெறுந்
சு. பிரபாகம்,
த/பெ. சுப்பையன்,
கதவு எண்.63,அங்கலக்குறிச்சி வீதி
அங்கலக்குறிச்சி
ஆலையம்மை.

நகல் - கோட்டப் பொறியாளர் (நெ), க(ம)ப, பொன்ளாச்சி அவர்களுக்கு தகவலுக்காக பணிந்து சமர்ப்பிக்கப்படுகிறது.

நகல் - உதவிப் பொறியாளர் (நெ), க(ம)ப, வால்பாறை தக்க தொடர் நடவடிக்கைக்காக.

6. When this Court wanted to see the fresh SCN dated 24.06.2024 and the writ petitioner's response to the same by way of reply/representation dated 29.06.2024, it came to light that both have not



been filed as part of the case file. They are not before us. Be that as it may, a careful perusal of the impugned order brings to light that a SCN dated 24.06.2024 has been issued, the writ petitioner/noticee has responded to the same by way of a representation dated 29.06.2024 and the impugned order has been made by R5 (who is the officer concerned) after considering the writ petitioner/encroacher's response to the fresh SCN. This means that the impugned order is clearly a final order made by the officer concerned under proviso to Section 28(2)(ii) of TN Highways Act and this Section 28 (2)(ii) reads as follows:

'28. Prevention of encroachment:

(1)

(2) The Highways authority or any person authorised by it in this behalf, may--

(i)

(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.'

In this view of the matter, the argument of the writ petitioner that R5 has again issued a SCN in a pre-determined manner pales into insignificance. In this regard, we notice that the impugned order is clearly captioned 'இறுதி அறிவிப்பாணை'. This means it is an order under proviso to Section 28(2)(ii) of TN Highways Act. The contents of impugned order also buttresses the position that it is a final order by the officer concerned under proviso to Section 28(2)(ii) as it refers to the SCN and deals with the writ petitioner's response (representation) and the contents of the writ petitioner's response/representation. However, instead of captioning the impugned order as 'இறுதி அறிவிப்பு', it has been captioned as 'இறுதி அறிவிப்பாணை'. This passes as hypertechnicality but below the caption 'இறுதி அறிவிப்பாணை', R5 has referred to 'Show Cause Notice' and beneath it, within parenthesis, has stated 'issued Under Chapter V, Sec.28(2)(ii) of Tamil Nadu Highways Act 2001'. This appears to be causing some difficulty. The impugned order is clearly neither a SCN nor a notice calling upon the writ petitioner to show cause under Section 28(2)(ii) of TN Highways Act. On the contrary, it is a final order under proviso to Section 28(2)(ii).



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7. To be noted, notwithstanding very many averments in the writ support affidavit, learned counsel for writ petitioner predicated his argument or in other words, campaigned against the impugned order on the primary ground that a fresh / further SCN has been issued in a pre-determined manner. This solitary point on which the matter was argued in the Admission Board is clearly a damp squib for reasons set out *supra*. In any event, we find no infirmity in the impugned order as it considers writ petitioner's response/representation and deals with the same suitably as impugned order *inter alia* says that writ petitioner/noticee has not produced any revenue records to demonstrate ownership regarding encroached land.

8. *Ergo*, the sequitur is, captioned main WP fails and the same is dismissed. Consequently, captioned WMP thereat also fails and the same is also dismissed. We refrain from imposing costs considering the manner in which submissions were made in the Admission Board.'

2. In the light of the undisputed common submission made by both sides, we dismiss the captioned WP and the captioned WMP thereat also as the same principle laid down in the order dated 19.12.2024 made in W.P.No.38184 of 2024 is applicable to the captioned WP and WMP also. There shall be no order as to costs.

(M.S., J.) (K.R.S., J.)
06.01.2025

Index : Yes/No
NC : Yes/No
cad



To:

1. The District Collector
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M. SUNDAR, J.

and

K. RAJASEKAR, J.

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ADDENDUM

W.P. No.38421 of 2024 & W.M.P. No.41612 of 2024

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M.SUNDAR, J.
and
K. RAJASEKAR, J.

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

Captioned matter is listed today under the cause list caption 'FOR BEING MENTIONED' as appearance portion *qua* respondents was omitted to be typed in the order dated 06.01.2025.

2. Today, Mr. S. Nagarajan, learned counsel for writ petitioner, Mr. T.K. Saravanan, learned Government Advocate for RR 1 to 5 and Mr. A.M. Ayyadurai, learned Government Advocate for R6, are before us.

3. The appearance portion *qua* respondents which was omitted to be typed reads as follows:

'For RR 1 to 5	Mr. T.K. Saravanan Government Advocate
For R6	Mr. A.M. Ayyadurai Government Advocate'



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4. All the aforereferred counsel on either side agreed to have the aforementioned correction made. In all other aspects, the order dated 06.01.2025 remains the same. Therefore, this order will now be made as 'Addendum' and Corrigendum / Erratum to 06.01.2025 order already pronounced in open court and already uploaded. This order will now be uploaded as 'ADDENDUM' to / along with order made by this Court on 06.01.2025 and Registry is directed to carry out necessary and consequential corrections.

(M.S., J.) (K.R.S., J.)
28.01.2025

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M. SUNDAR, J.

and

K. RAJASEKAR, J.

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W.P.No.38421 of 2024

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