



W.P.(MD)No.2830 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.03.2026

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**W.P.(MD)No.2830 of 2021
and
W.M.P.(MD)No.2317 of 2021**

G.Ajee Baasha

... Petitioner

Vs.

- 1.National Highways Administration Authority of India,
(Ministry of Road Transport and Highways),
Office of the Project Director P.I.U.,
No.26, 1st Floor, V.G.P.Nagar West,
Vazhudhareddy Post,
Viluppuram - 605401.
- 2.The Project Director,
NHAI, Project Implementation Unit,
Office of the Project Director P.I.U.,
No.26, 1st Floor, V.G.P.Nagar West,
Vazhudhareddy Post,
Viluppuram - 605401.
- 3.Highways Administration Officer Authorized,
Plot No.P-34, 3rd Floor,
Sri Towers (SP) Industrial Estate,
Guindy, Chennai – 600032.



W.P.(MD)No.2830 of 2021

4.Trichy District Collector,
Tirchirappalli District,
Tiruchy.

5.Head Surveyor,
Manachannalur Taluk,
Tiruchirappalli District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in 11021/NH-227/112/Vol-1/2021/PIU-VPM/143 dated 28.01.2021, quash the same and further direct the respondents to conduct an enquiry and provide adequate opportunity to the petitioner before initiating any adverse action against the petitioner.

For Petitioner : Mr.S.Vinod Sathya Lazar

For Respondents : Mr.S.Vino Gokul Abimanyu,
For M/s.Arulvadivel Associates for R1 & R2.
Dr.R.Rajagopal for R3
Mr.G.V.Vairam Santhsoh,
Addl. Government Pleader for R4 & R5.

ORDER

(Order of the Court was delivered by G.R.Swaminathan, J.)

Heard both sides.



W.P.(MD)No.2830 of 2021

WEB COPY

2.What is impugned in this writ petition is the notice for removal of unauthorized occupation under Sections 26(2) of the Control of National Highways (Land and Traffic) Act, 2002 issued by the authorized officer of NHAI.

3.The impugned notice reads that the noticee can offer his explanation within seven days from the date of receipt of the notice. It is stated by the learned counsel for the writ petitioner that in response to the notice, the petitioner offered his explanation on 02.02.2021. We went through the contents of the said reply. The writ petitioner has taken a specific plea that a large extent of land in Survey No.69/2, Pitchandarkoil village belonged to his family and that a few decades ago, a portion of the same was acquired for laying the petition mentioned National Highway. The petitioner would further claim that boundaries were already marked and that only beyond the said limits and on his patta land, he had put up a fencing. The petitioner denies that he is an encroacher.



W.P.(MD)No.2830 of 2021

4.The learned standing counsel for NHAI submits that on account of grant of interim order in this writ petition, the said objection has not been disposed of till date.

5.Section 26 of the Control of National Highways (Land and Traffic) Act, 2002 reads as follows:-

“26.Removal of unauthorised occupation.—

(1)...

(2) When, as a result of the periodical inspection of highway land or otherwise, the Highway Administration or the officer authorised by such Administration in this behalf is satisfied that any unauthorised occupation has taken place on highway land, the Highway Administration or the officer so authorised shall serve a notice in a prescribed form on the person causing or responsible for such unauthorised occupation requiring him to remove such unauthorised occupation and to restore such highway land in its original condition as before the unauthorised occupation within the period specified in the notice.

(3) The notice under sub-section (2) shall specify therein the highway land in respect of which such notice is issued, the period within which the unauthorised occupation on such land is required to be removed, the place and time of hearing any



W.P.(MD)No.2830 of 2021

representation, if any, which the person to whom the notice is addressed may make within the time specified in the notice and that failure to comply with such notice shall render the person specified in the notice liable to penalty, and summary eviction from the highway land in respect of which such notice is issued, under sub-section (6).

(4) The service of the notice under sub-section (2) shall be made by delivering a copy thereof to the person to whom such notice is addressed or to his agent or other person on his behalf or by registered post addressed to the person to whom such notice is addressed and an acknowledgment purporting to be signed by such person or his agent or other person on his behalf or an endorsement by a postal employee that such person or his agent or such other person on his behalf has refused to take delivery may be deemed to be prima facie proof of service.

(5) Where the service of the notice is not made in the manner provided under sub-section (4), the contents of the notice shall be advertised in a local newspaper for the knowledge of the person to whom the notice is addressed and such advertisement shall be deemed to be the service of such notice on such person.

(6) Where the service of notice under sub-section (2) has been made under sub-section (4) or sub-section (5) and the unauthorised occupation on the highway land in respect of which such notice is served has not been removed within the time



WEB COPY



W.P.(MD)No.2830 of 2021

specified in the notice for such purpose and no reasonable cause has been shown before the Highway Administration or the officer authorised by such Administration in this behalf for not so removing unauthorised occupation, the Highway Administration or such officer as the case may be, shall cause such unauthorised occupation to be removed at the expenses of the Central Government or the State Government, as the case may be, and impose penalty on the person to whom the notice is addressed which shall be five hundred rupees per square metre of the land so unauthorisedly occupied and where the penalty so imposed is less than the cost of such land, the penalty may be extended equal to such cost.

(7) ...

(8) ...

(9) The Highway Administration or an officer authorised by such Administration in this behalf shall, for the purposes of this section or section 27, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) issuing commissions for the examination of witnesses;

and

(d) any other matter which may be prescribed, and any proceeding before such Administration or officer shall be deemed to



W.P.(MD)No.2830 of 2021

be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860) and the Administration or the officer shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).”

In the case on hand, notice was issued under sub-section (2) of Section 26 of the Act. The noticee has offered his reply. The Section is silent regarding the manner of conducting the enquiry. We therefore propose to shed some light on the procedure to be followed by the authority when reply is submitted. If the noticee claims that he is not an encroacher and sets up title in himself and the assertion is prima facie backed by materials, a survey has to be conducted. Opportunity shall be given to the noticee to be present at the time of conducting the survey. Copy of the survey report and survey sketch must be served on the noticee. This should be followed by an enquiry. The noticee has to be heard in person and he or she should be given full opportunity to substantiate his or her defence. It is not necessary that the enquiry should partake a character as a suit proceedings. It can be fast tracked and summarily conducted. But a speaking order has to be passed on the objections made in response to the notice. All the contentions raised during the enquiry must be dealt with.



W.P.(MD)No.2830 of 2021

If the outcome is adverse to the noticee, a short breathing time has to be given to the noticee so that he can explore his remedies.

6.We dispose of this writ petition by directing the concerned authority of the NHAI to pass a suitable order on the writ petitioner's objection. The procedure indicated above shall be followed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.,) & (R.P. J.,)
24.03.2026

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias

To:

1.The District Collector,
Tiruchirappalli District,
Tiruchy.

2.Head Surveyor,
Manachannalur Taluk,
Tiruchirappalli District.



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W.P.(MD)No.2830 of 2021



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