

**(2010) 09 MAD CK 0086**

**In the Madras High Court**

**Case No :** Writ Petition (MD) No. 6559 of 2010 and M.P. (MD) No. 1 of 2010

R. Jayabalan Thevar

APPELLANT

Vs

The District Collector, The Divisional Engineer, Highways, The  
Assistant Divisional Engineer, Highways, Sivakasi and The  
Tahsildar, Sivakasi, Virudhunagar District

RESPONDENT

---

**Date of Decision :** 21-09-2010

**Acts Referred:**

Tamil Nadu Highways Act, 2001 — Section 28(2)

**Citation :** (2010) 09 MAD CK 0086

**Hon'ble Judges :** S. Nagamuthu, J;P. Jyothimani, J

**Bench :** Division Bench

**Advocate :** G. Marimuthu, for the Appellant; V. Rajasekaran, Special  
Government Pleader, for the Respondent

**Final Decision :** Allowed

---

## **Judgement**

P. Jyothimani, J.—This writ petition is directed against the order dated 27.04.2010 passed by the third respondent, in and by which the third

respondent has directed the removal of encroachment on the highways No. 42 -  
Srivilliputhur - Sivakasi - Virudhunagar K.M. 16/8 - 18/4

(Satchiyapuram and Reserve Line).

2. On the face of it, the impugned order passed by the third respondent is  
against the provisions of Section 28(2) of the Tamil Nadu Highways

Act, 2001 which reads as follows:

28 (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.

3. A reading of the above said Section makes it abundantly clear that whenever an action has been initiated by the Highways Authority, a show

cause notice has to be given to the affected person, specifically mentioning the Survey Number and the extent of the land encroached and for the

said show cause notice, the affected person is entitled to give a representation and thereafter, on hearing the parties, appropriate order has to be

passed for the purpose of removal of encroachment . However, a reference to the impugned order shows that no particulars were given about the

Survey Number and the extent of land encroached . In such view of the matter, we are of the view that the impugned order of the third respondent

is liable to be set aside with liberty to the third respondent to issue a fresh notice.

4. Accordingly, this writ petition is allowed and the impugned order of the third respondent dated 27.04.2010 is set aside. However, liberty is

given to the third respondent to issue a fresh show cause notice and proceed with the matter in accordance with law and pass appropriate orders

by following the provisions of the Tamil Nadu Highways Act, 2001. However, there will be no order as to costs. Consequently, the connected

M.P.(MD) No. 1 of 2010 is closed.