



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

and

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P. (MD)No.13052 of 2018

and

W.M.P. (MD)No.11915 of 2018

N.Balan

: Petitioner

Vs.

The Block Development Officer,  
(Village Panchayats),  
Kosur Village Panchayat,  
Krishnarayapuram Panchayat Union,  
Karur District.

: Respondent

**PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating to the impugned order in the form of notice passed by the respondent in his proceedings Na.Ka.A3/66/2013, dated 12.06.2018 and quash the same as illegal, arbitrary and in violation of principles of natural justice.

For Petitioner : Mr.B.Saravanan

For Respondent : Mr.V.R.Shanmuganathan  
Special Government Pleader

### O R D E R

[Order of the Court was made by **K.RAVICHANDRABAABU, J.**]

The petitioner is aggrieved against the order of the respondent dated 12.06.2018, wherein and whereby he was called upon to vacate from the property at Survey No.296/3 and 294/2 Kosur Village Panchayat, Krishnarayapuram Panchayat Union by alleging that the petitioner has encroached upon the said land and as such said encroachment is liable to be removed under the Tamil Nadu Land Encroachment Act, 1905.

2.Mr.B.Saravanan, learned counsel appearing for the petitioner submitted that first of all the petitioner cannot be called as an encroacher, as he has been issued with license by Panchayat itself to run a Tea stall in the disputed property for a long number of years. He further contended that even otherwise, the respondent has not justified in issuing the impugned order straight away to remove the encroachment without issuing any notice to the petitioner. Therefore, it is contended that Principles of Natural justice is violated in this case. The last submission made by the learned counsel for the petitioner is that action under the Tamil



Nadu Land Encroachment Act, 1905 can be initiated only by the revenue officials and not by the Block Development Officer of a Panchayat Union.

3. Per contra, the learned Special Government Pleader appearing for the respondent invited our attention to Section 131(2) of the Tamil Nadu Panchayat Act, 1994 and submitted that in view of the power conferred on the Executive authority of Panchayat Union under the above said Provision of law, the respondent has rightly issued the impugned proceedings. He further submitted that even though the impugned proceedings called upon the petitioner to vacate, still the respondent, in case the petitioner fails to vacate, will have to approach the revenue authority for initiate proceedings under the Tamil Nadu Land Encroachment Act, 1905, as provided under Section 131(2) of the Tamil Nadu Panchayat Act, 1994. Therefore, he submitted that the petitioner cannot have any grievance as such, against the impugned order.

4. Heard both sides.

5. As rightly pointed out by the learned Special Government Pleader, Section 131 (2) of the Tamil Nadu Panchayat Act, 1994, empowers the respondent to secure the removal of encroachment. But at the same time, in the absence of any other provision under the above law, or Rules as to how such action shall be taken by the Executive authority of the Panchayat, we are of the view that before resorting to take action under Section 131(2) of the Act, the Executive authority or the Commissioner is to issue notice to the person against whom action is contemplated under Section 131(2) of the Act and seek his explanation.

6. In this case, it has not been done so, more particularly, when the petitioner claims that he is not an encroacher and on the other hand he is a licensee under the Panchayat. Therefore, it is all the more necessary for the respondent to hear the petitioner before passing any order under Section 131(2) of the Act. Accordingly, without expressing any view on the rival contentions of the parties, this writ petition is disposed of by directing the respective parties to treat the impugned proceedings as a notice. A further direction is issued to the petitioner to give explanation to the said notice within a period of two weeks from the date of receipt of a copy of this order. On receipt of such explanation, the respondent shall pass fresh order under Section 131(2) of the Act, within a period of four weeks thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //



To

The Block Development Officer,  
(Village Panchayats),  
Kosur Village Panchayat,  
Krishnarayapuram Panchayat Union,  
Karur District.

+1 CC to Mr.B.SARAVANAN, Advocate ( SR-71308[F] dated 25/06/2019 )  
+1 CC to SPL GP ( SR-70948[F] dated 24/06/2019 )

**W.P. (MD) No.13052 of 2018**  
**21.06.2019**

**RJ2**

MK (02.07.2019) 3P 4C