



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.P. (MD) .No.20976 of 2019

and

W.M.P. (MD) .No.17578 of 2019

Kasim Beevi

... Petitioner

Vs.

1.The District Collector,
Tirunelveli,
Tirunelveli District.

2.The Tashildar,
Shenkottai Taluk,
Tirunelveli District.

3.The Executive Officer,
Town Panchayat,
Vadakarai,
Tirunelveli District.

... Respondents

PRAYER:Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned eviction order passed by the third respondent in his proceedings in Na.Ka.No.126/2018 dated 16.09.2019 and quash the same as illegal and pass orders within a stipulated period fixed by this Court.

For Petitioner : Mr.J.Jeyakumaran

For R1 and R2 : Mr.A.K.Baskara Pandian
Special Government Pleader

For R3 : Mr.D.Muruganantham
Additional Government Pleader



ORDER

(Order of this Court was made by **T.S.SIVAGNANAM, J**)

Heard Mr.J.Jeyakumaran, learned counsel appearing for the petitioner, Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the first and the second respondents and Mr.D.Muruganantham, learned Additional Government Pleader appearing for the third respondent.

2.By consent of either side, this writ petition is taken up for disposal.

3.The petitioner is aggrieved by a notice issued by the third respondent dated 16.09.2019, which is an eviction notice stating that the writ petition in W.P.(MD).No.874 of 2019 was dismissed by order, dated 26.06.2019 and therefore, the petitioner has to remove the encroachment caused by him failing which action will be initiated under the provision of the Tamil Nadu District Municipalities Act, 1920.

4.It appears that the third respondent had noted only paragraph No.7 of the order passed in the said writ petition dated 26.06.2019 without taking note of the observations made in paragraph Nos.5 and 6 of the order.

5.The learned Special Government Pleader appearing for the first and the second respondents fairly submits that the provision of the Tamil Nadu District Municipalities Act, 1920 would apply as the third respondent, which is a Town panchayat and the provision of the Tamil Nadu Panchayat Act will not apply. It appears that this mistake had crept in the order passed in the earlier writ petition, as it was represented as if the third respondent is a village panchayat.

6.In any event, the third respondent, if proposes to initiate action for eviction, has to clearly set out as to what is the nature of encroachment and under which provision of the Act the notice was issued and in the said notice, sufficient opportunity should be granted to the petitioner to give his objection and the minimum time limit should be 15 days. In case, the petitioner files his objection and produces documents, then the same should be examined for which purpose the petitioner should be called to appear in person and thereafter only, the proceedings can be initiated. Since we find that there is a procedural error committed by the third respondent in issuing the impugned notice, we are inclined to allow this writ petition and set aside the impugned notice with further directions.



7. In the result, this writ petition is allowed and the impugned notice is set aside and the matter is remanded to the third respondent with a direction to issue notice under the specific provision of the Tamil Nadu District Municipalities Act, pointing out the nature of encroachment and giving the petitioner 15 days time to submit his objection and on receipt of the objection and the documents, if the petitioner had produced, the third respondent shall enquire into the matter and if necessary, conduct spot inspection through his officers and thereafter, pass a speaking order on merits and in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The District Collector,
Tirunelveli,
Tirunelveli District.

2. The Tashildar,
Shenkottai Taluk,
Tirunelveli District.

3. The Executive Officer,
Town Panchayat,
Vadakarai,
Tirunelveli District.

+1CC TO MR.J.JEYAKUMARAN, Advocate Sr. No.90799

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DKS (CO)

TR (23.10.2019) 3P 5C