



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2021

CORAM:

**THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN**

**W.P(MD)Nos.21100 and 21101 of 2021
and W.M.P. (MD) Nos.17697 and 17699 of 2021**

H.Abdul Kareem ... Petitioner in W.P.(MD) No.21100/2021

K.Durai ... Petitioner in W.P.(MD) No.21101/2021

Vs.

1.The District Collector,
Ramanathapuram District,
Ramanathapuram.

2.The Block Development Officer (V.P.),
Panchayat Union Office,
Mandapam @ Uchipuli,
Ramanathapuram District.

3.The Village Panchayat President,
Pamban Village Panchayat,
Rameshwaram, Ramanathapuram District.

4.Nabiza Banu ... Respondents

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the 2nd respondent in his proceedings in Na.Ka.No.A.2/4242/2015, dated 26.10.2021 and quash the same.

For Petitioner in both : Mr.K.Hema Karthikeyan
Writ Petitions

For Respondent No.1 : Mr.P.Subbaraj
in both Writ Petitions Special Government Advocate

For Respondent Nos.2 : Mr.D.S.Nedunchezian
& 3 in both Writ Standing Counsel



ORDER

(Order of the Court was made by PUSHPA SATHYANARAYANA, J.)

The petitioners have filed these Writ Petitions, challenging the proceedings of the second respondent in Na.Ka.No.A.2/4242/2015, dated 26.10.2021.

2.Mr.P.Subbaraj, learned Special Government Pleader, accepts notice on behalf of respondent No.1 and Mr.D.S.Nedunchezian, learned Standing Counsel, accepts notice on behalf of respondent Nos.2 and 3. In view of the order, we propose to pass in these Writ Petitions, notice to fourth respondent is dispensed with.

3.By consent, this Writ Petition itself is taken up for final disposal at the time of admission.

4.The petitioners are in occupation of a place called "Maya Bazaar", which was allotted to them by the Government and they are running shops for more than four decades and along with the petitioners there are 53 shops in it. It is stated that they are paying license fee to the panchayat. Even in the affidavits filed in support of these Writ Petitions, it is stated that the third respondent was collecting encroachment fee from the shop holders in the "Maya Bazaar" and the Panchayat has also laid some roads for the ingress and egress of the public. At the instance of one Nabiza Banu, W.P.(MD) No.6623 of 2011 has been filed, in which, the then Block Development Officer has filed a counter affidavit stating that there was no encroachment and there was free movement of vehicles.

5.According to the petitioners, it is at the instance of Nabiza Banu, the Panchayat staff stopped collecting encroachment fee, which they were collecting all along. While so, the Panchayat has issued notices under Section 131(2) of the Tamil Nadu Panchayat Act to remove encroachment and to vacate the place. The said eviction notices are being challenged in these Writ Petitions.

6.When it is stated in the affidavits filed in support of these Writ Petitions that the encroachment fees are being paid by the petitioners, then it is clear that there have been encroachments by the petitioners. According to the petitioners, excepting six shop holders, including the petitioners, other shop holders were not issued with the eviction notices. It is discriminatory and violative of Article 14 of the Constitution of India. They also stated that a Resolution was passed by "Grama Sabha", requesting the District Collector to regularize the encroachments, which was forwarded by the third respondent Village



Panchayat President.

7. Be that as it may, it is settled position of law that even the encroacher should be evicted only by due process of law. In the instant case, the petitioners were issued notices under Section 131(2) of the Tamil Nadu Panchayat Act. However, the same were issued without conducting a survey to find out the actual encroachments and without finding whether the petitioners can be given alternative accommodation elsewhere.

8. In the light of the above facts, we are inclined to direct respondent Nos.2 and 3 to conduct survey of not only the petitioners' shops but also the entire "Maya Bazaar" to find out any encroachment. After survey, if the authorities find any encroachment and if the said "Maya Bazaar" was created only to accommodate these vendors by the officials of the respondents, then they should be given alternative accommodation, granting them sufficient opportunity to vacate. Till such time, *status quo* should be maintained.

9. The Writ Petitions stand disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

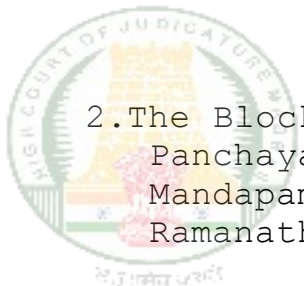
sj

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

1. The District Collector,
Ramanathapuram District,
Ramanathapuram.



2.The Block Development Officer (V.P.),
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Ramanathapuram District.

3.The Village Panchayat President,
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+1 CC to M/s.SPL GP (SR-36269[F] dated 29/11/2021)

W.P (MD) Nos.21100 and 21101 of 2021
26.11.2021

TP (CO)
SB(08.12.2021) 4P 5C