



W.P(MD)No.626 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.626 of 2023

and

W.M.P(MD)No.625 of 2023

Railway Thozhilalar Tholugai Pallivasal,

Rep. by its Secretary, Mr.Kamartheen,

S/o.Sheik Dawood,

Railway Colony,

Manamadurai,

Sivagangai District.

... Petitioner

Vs.

The Estate Officer Cum Divisional Railway Manager,

Divisional Office,

Works Branch,

Madurai.

... Respondent



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PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the impugned notice issued by the Respondent in his proceedings in No.U/W.274/ADEN/Central/MDU dated 27.12.2022 and quash the same as illegal.

For Petitioner : Mr.M.Ajmal Khan,
Senior Counsel
M/s.Ajmal Associates
For Respondents : Mr.K.R.Laxman,
Senior Panel Counsel

ORDER

The Writ Petition has been filed in the nature of a Certiorari seeking records relating to a notice issued by the respondent / Estate Officer cum Divisional Railway Manager, Divisional Office, Works Branch, Madurai, to the petitioner herein/ Railway Thozhilalar Tholugai Pallivasal, represented by its Secretary, Railway Colony, Manamadurai, Sivagangai District, in proceedings No.U/W.274/ADEN/Central/MDU dated 27.12.2022 and to quash the same.



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2. In the affidavit filed in support of the Writ Petition, it had been stated that nearly about 5 decades ago, the petitioner had made a representation to the General Manager of the Southern Railway to allot Railway land to build a prayer hall for offering prayers. The petitioner prayer hall was established in the land belonging to the Southern Railway under and with authorisation. It had been stated that the prayer hall had been established at that particular point of time to enable travellers, Railway employees and local people to offer their prayers. It had also been stated that this is the only prayer hall in that particular area. It had also been stated that the enjoyment of the petitioner had been open, uninterrupted and with the knowledge of the Southern Railway. However, it had been further stated that the Southern Railway had directed the petitioner to pay the electricity charges directly to the TANGEDCO by issuing 'No Objection Certificate' for availing the electric power supply directly from the power distributing authorities. The petitioner had also been paying the necessary electricity charges on the basis of 'No Objection Certificate' issued.

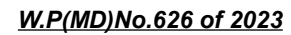


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3. While that being the case, a notice was issued on 14.04.2015 taking recourse to the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. It has further stated in the affidavit that the petitioner appeared in person before the officials and made their submissions. Thereafter, no further action was initiated. The impugned notice was then issued on 27.12.2022 under Section 4(1) of the said Act, calling upon the petitioner to show-cause why an order of eviction should not be passed against the petitioner herein. Claiming that the notice had not specified the grounds under which the order of eviction is proposed and the necessity to evict the petitioner herein, and consequently, since those facts are not been stated in the notice the petitioner would not able to reply to the said notice in an effective manner, the present Writ Petition has been filed.

4. A counter affidavit has been filed on behalf of the respondents wherein, after replying to the various averments in the affidavit filed in support of the Writ Petition, it had been further stated that the Railway Administration, as part of reclaiming lands, issued the notice under Form-A, originally on 14.04.2015 and in Form B on



5. With respect to the grounds, it had been stated that the land was legal and in accordance with the provisions of the Act. It had also been stated that the land belongs to the Railways and that the petitioners had not mentioned since it was not part of the standard format for such proceedings. It had been stated that the land is primarily agricultural and is unauthorisedly occupied by several encroachers, including also the petitioner herein. It had also been stated that about 8.8 cents of the land is enjoyed by the petitioner.

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the land is in the hands of outsiders whom the Railways consider as encroachers.

7. Reliance had also been placed on the judgment of the Hon'ble Supreme Court which had instructed the Railway Administration to evict all encroachments over the Indian Railway land and report back to the Hon'ble Supreme Court.

8. The respondent had also filed a copy of the said order passed by the Hon'ble Supreme Court in *SLP (Civil) Diary No.19714 of 2021, Utran Se Besthan Railway Jhopadpatti Vikas Mandal Vs. Government of India and others*, dated 16.12.2021.

9. The Hon'ble Supreme Court while examining an encroachment in the lands of Western Railway had stated that the Railways had not taken any steps to reclaim the lands which were under the occupation of encroachers and which land could be utilized to safeguard the Railway property. They had also observed that notice should be issued within a period of one week and if the occupants fail to



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vacate the unauthorised structure, it would be open to the Western Railway in that particular case to initiate appropriate action to forcibly dispossess and to demolish and to remove the unauthorised structure.

10. The Hon'ble Supreme Court had also stated that the Railways have power to initiate civil and criminal action against unauthorized occupants on Railway property. Finally, a status report of action taken by the Railway Board was directed to be placed before the Hon'ble Supreme Court.

11. The learned counsel for the respondent sated that these directions cannot be restricted only to Western Railways but would also apply even to Southern Railway. The learned counsel also pointed out that a meeting has been convened by the State Government, which had also taken up the issue and called for a report regarding the steps taken to evict encroachers from the Railway land.

12. The learned counsel for the respondent also pointed out a judgment of a Division Bench of this Court in *W.P.(MD)No.24952 of*



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2022, *S.RamaKrishnan Vs. State of Tamil Nadu, rep. by Secretary, Department of Revenue, Chennai and three others*, wherein, by an order dated 03.11.2022, the Division Bench of this Court had struck down the notice issued by the Railways on the ground that necessary opportunity has not been granted to the petitioner therein but had, however granted liberty to the Railways to issue a fresh show cause notice by giving two weeks time to the petitioner therein to submit explanation and then to proceed in the manner known to law.

13. The learned counsel for the respondent also stated that the petitioner has been in occupation of a substantially larger portion of lands and placing reliance on all these materials, urged that the Writ Petition should be dismissed.

14. The arguments of the learned Senior Counsel on behalf of the petitioner must also be pointed out. The learned Senior Counsel drew attention to the notice which had been issued under Section 4(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, which is impugned in this Writ Petition.



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15. It was argued by the learned Senior Counsel that the grounds for eviction should have been very specifically stated. It was further contended that the notice should also state that the petitioner is in unauthorised occupation and also state the grounds why the premises were required and why action should be taken. All these aspects were absent in the notice.

16. The learned Senior Counsel also pointed out that a 'No Objection Certificate' dated 11.03.2019 was issued by the Southern Railway to the petitioner herein, which had been granted for availing electric power supply directly from the power distribution authorities. It was therefore, contended out that the occupation of the petitioner had been recognized by the respondent and this grant of 'No Objection Certificate' could be termed as a grant of licence for occupation and is still in force and had not been interfered with and had not been withdrawn in manner known to law.



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17. It had been stated that the petitioner is enjoying the electricity connection consequent to such issuance of 'No Objection Certificate'.

18. I must also point out that though not specifically stated in the grounds, one further aspect came up for consideration namely, the very provision under Section 4(1) of the Act, wherein, it is stated that a notice must be issued within a period of seven working days from the date of receipt of information regarding unauthorised occupation. Section 4(1-B) however also states that delay in issuing the notice would not vitiate any proceedings under the Act. But I must point out that the concept of delay would arise only when a starting point of knowledge is first stated in the notice. If the starting point of notice is first stated and then, if beyond the period of seven days a notice is issued, then, the respondent would be saved under section 4(1-B) of the Act.

19. The learned counsel for the respondent relied on the Section 4(1-A) of the said Act and stated that if there are reasons to believe that if any person is in unauthorised occupation then, notice



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could be issued in writing calling upon why show cause notice should not be issued seeking eviction.

20. The impugned notice in this case had however been issued very specifically under Section 4(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

21. Let me, for clarity, extract the notice in its entirety :

SOUTHERN RAILWAY

No.U/W.274/ADEN/Central/MDU

*Divisional Office
Works Branch
Madurai
Date: 27.12.2022*

FORM A

*Form of notice under sub-section (1) of section 4 of the Public
Premises (Eviction of Unauthorized Occupants) Act, 1971*

To

*The Trustee.
Railway Thelilalargal Thelagai Pallival
Railway Colony,
Manamadurai.*



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Through : SSE/Works/MDU

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Whereas I, the undersigned, am of opinion, on the grounds specified below, that you are in unauthorized occupation of the public premises mentioned in the Schedule below and that you should be evicted from the said premises.

GROUND

You are in unauthorized occupation of Railway land to an extent of 358.49 sqm constructing Mangalore tiled AC sheet /RCC roof building (Mosque) at Manamadurai.

Now, therefore, in pursuance of sub-section (1) of section 4 of the Act 1971, I hereby call upon you to show cause on or before the 11.01.2023 why such an order of eviction should not be made

And in pursuance of clause (b) (u) of sub section (2) of section 4, I also call upon you to appear before me in person or a duly authorized representative capable to answer all material question connected with the matter along with evidence which you intend to produce in support of the cause shown on 11.01.2023 at 11.00 hrs for personal hearing.

In case you failed to appear on the said date and the time, the case will be decided exparte.

SCHEDULE

Unauthorized occupation of Railway Land to an extent of 358.49 sqm constructing Mangalore tiled AC sheet / RCC roof building (Mosque) at Manamadurai.

T.RAMESH BABU (Digitally signed by T.Ramesh Babu)
Signature and Seal of the Estate Officer



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Copy to: Sr. DEN/Central/MDU for information and necessary action

Copy to: ADEN/Building/MDU for information and necessary action.

Copy to: SSE/Works/MDU in triplicate. He will serve the copy of this notice to the party duly obtaining the party's acknowledgement in the duplicate copy and submit the same to this office immediately.

22. A careful perusal of the impugned notice very clearly points out that it had been issued under Section 4(1) of the said Act. Once that particular provision is stated then the notice should confirm to the requirements of that particular provision. The respondent cannot expand the terms of the said provision.

23. Section 4(1) of the Act is as follows ;

" 4. Issue of notice to show cause against order of eviction.—

(1) If the estate officer has information that any person is in unauthorised occupation of any public premises and that he should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing within seven working days from the date of receipt of the information regarding the



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unauthorised occupation calling upon the person concerned to show cause why an order of eviction should not be made."

24. The provision is very clear. It states that if the Estate Officer has information that somebody is in unauthorized occupation then, the Estate Officer shall issue a notice in writing within 7 working days from the date of information regarding the unauthorised occupation and seeking explanation as to why an order of eviction should not be made.

25. Section 4(1-B) is as follows :

"(1-B) Any delay in issuing a notice referred to in sub-sections (1) and (1-A) shall not vitiate the proceedings under this Act."

26. This provides that any delay in issuing the notice would not vitiate the proceedings. But the concept of delay would arise only when a starting date is given. If a starting date is given and notice is



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issued beyond the prescribed time then, that time which had been taken beyond the prescribed time cannot be put against the respondent herein. However, it requires a starting date to be given. That date is the date of information.

27. Here the respondent themselves have to a large extent accepted and regularized the occupancy of the petitioner by granting a 'No Objection Certificate' for obtaining electricity connection directly from the electricity distribution authorities. The purpose for which electricity was sought by the petitioner is to be in occupation of the premises. The purpose for which 'No Objection Certificate' was granted for getting electricity connection was to enable the petitioner to continue to be in occupation of the premises. Therefore, unless that particular permission is also interfered with, a notice under Section 4(1) cannot be issued since there is no information of the date on which the respondent herein came to believe that the petitioner is in unauthorised occupation. So long as the 'No Objection Certificate' is in force, then to a little extent it could be stated that the occupation cannot be termed as unauthorised.



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28. The learned Senior Counsel for the petitioner had relied on 1979 SCC Online J & K 19 : AIR 1980 SC Jammu & Kashmir - 16, *Dr.Yash Paul Gupta Vs. Dr.S.S.Anand and others*, which was also a case under Section 4(1) of the very same Act, in which it has been held as follows :

"8. The only ground of eviction which the notice specifies is, that the appellant occupied the Govt. quarter mentioned in the notice unauthorisedly. This statement in our opinion cannot be characterised as a ground of eviction by any stretch of logic. This may be at the most an inference of unauthorised occupation based upon some ground other than the fact that the appellant was an unauthorised occupant of the public premises. How his occupation of the premises which at its inception was admittedly lawful became unauthorised, must have been the outcome of some supervening circumstances. What were those supervening circumstances, the appellant had every right to know, as it would be those circumstances alone which would constitute the ground for his eviction within the meaning of Clause (a) of Sub-section (2). How could it be said, that merely telling the appellant that ho was an unauthorised occupant because he occupied the Govt.



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quarter unauthorisedly tantamounted to specifying the grounds on which his eviction was proposed ? Such a statement in the notice could hardly constitute a ground as already observed.

12. This brings us to the consideration of the question as to whether or not there has been sufficient compliance with Section 5 of the Eviction Act. This section casts an obligation on the Estates Officer to give the occupant of the public premises a reasonable opportunity of producing evidence as well as of being heard before any order is passed against him. This opportunity has to be reasonable and not merely illusory. As we go through the record of the Estates Officer, we find that the entire proceedings before him did not take more than three dates to culminate into the impugned eviction order. The first date i.e. 26th Aug. 1975 was fixed for appearance of the appellant and showing cause by him against his proposed eviction. No cause in the form of written objections was shown on that date and the Estates Officer gave him another date i.e. 1st Sept. 1975 for the said purpose. On that date again objections were not filed and another opportunity was sought to file the same after going through one file for summoning of which a request was made through a written application of the even date. From the perusal of



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the interim order recorded by the Estates Officer on 1-9-1975 it is not very much clear whether he treated this application as written objections and thereby closed the right of the appellant to file any further objections. He, however, summoned the file "to meet the ends of justice" as he put it. At this stage the Estates Officer appears to have gone astray and overlooked the mandatory provisions of Section 5. The file had been summoned by the appellant not with the object of comprising the whole evidence which he wanted to lead, but merely to provide him some assistance in submitting his written objections. He was understandably misled by the procedure adopted by the Estates Officer who neither told him in express terms that his right to file any further objections had been closed, nor enquired from him whether he wanted to lead any other evidence besides the file which he had asked to be summoned. We would not be harsh to the Estates Officer if we observe that his conduct on 1-9-1975 was somewhat dubious. He appears to be under the impression as if he was going to show some favour to the appellant by acceding to his request in summoning the file, little realising that he was legally bound to provide a reasonable opportunity to him to produce all such evidence as he liked to produce. Again, the final order passed on 15-9-1975 too does not



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indicate that the appellant or his counsel were at all heard on that date. The presence of the appellant's counsel is no doubt recorded on that date, but not a single word occurs in the order that he was also heard before the same came to be passed. His presence like a statue was not enough to meet the requirements of law. The averments made by the Estates Officer in his reply affidavit that the counsel for the appellant was heard, cannot in view of the contents of the impugned order inspire any confidence. The functions of the Estates Officer under the Eviction Act are quasi-judicial. He must conduct the proceedings as a Court, uninfluenced by the exigencies or compulsions of the executive. His outlook and approach should be purely judicial, where administrative exuberance has no role to play. It is true that the Eviction Act is aimed at speedy action, but speed should not be so rash that even justice is trampled down in maintaining the same. We are, therefore, clearly of the opinion that the impugned order of eviction is violative of Section 5 as well. We now proceed to deal with the ground of mala fides."

29. The learned Senior Counsel for the petitioner also relied on 1991 SCC Online Bombay 59 : AIR 1992 Bomaby 375, Minoo



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Framroze Balsara Vs. The Union of India and others, in which it had been held as follows :

"34. The provisions of the Eviction Act, 1971, can be applied to persons who are in unauthorised occupation of public premises A person, by reason of Section 2(g), is in unauthorised occupation if his occupation is without authority. He is in unauthorised occupation if he continues to occupy public premises after the authority under which he was allowed to occupy the same has expired or has been determined for any reason whatsoever. The provisions of the Eviction Act, 1971, therefore, entitle the Government company or corporation which is the owner of the public premises to terminate for any reason whatsoever the authority of the occupant to occupy the same and, by so doing, place the Government company or corporation and the occupant in the position of landlord and tenant governed by the provisions of the Transfer of Property Act. The provisions of Sections 4 and 5 of the Eviction Act, 1971, deal with the procedure for the eviction of an unauthorised occupant and must be read together. Section 4 prescribes that the unauthorised occupant must be issued with a notice in writing to show cause why an order of eviction should not be passed against him. That notice has to be issued by the Estate Officer provided he is of the



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opinion that the addressee of the notice is in unauthorised occupation of public premises and that he should be evicted. Prima facie satisfaction of the Estate Officer is a sine qua non of the issuance of the show cause notice. The prima facie satisfaction must be two-fold; firstly, that the addressee is in unauthorised occupation of public premises, and, secondly, that, he should be evicted. The notice must set out the grounds on which the order of eviction is proposed to be made. It must, therefore, state not only why the addressee is thought to be in authorised occupation but also why it is thought that he should be evicted. It must inform the addressee that he is entitled to show cause against the proposed order of eviction. The addressee cannot effectively show cause unless he knows why the Estate Officer is of the opinion that he is in unauthorised occupation. He also cannot show effective cause unless he knows why his eviction is proposed. The provisions of Section 4 make it clear that the addressee may seek a personal hearing from the Estate Officer and may lead evidence for the purposes of showing cause against the proposed order of eviction. This is clear also from the provisions of Section 8 which vest in the Estate Officer the powers of a Civil Court in regard to the summoning of witnesses and examining them on oath and the discovery and production of documents.



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35. Under Section 5 the Estate Officer must consider the cause that is shown by the addressee. Plainly, he must consider the addressee's case on both grounds, viz. whether he is in unauthorised occupation of public premises and whether he should be evicted. Even if he finds that the addressee is in unauthorised occupation, the Estate Officer is not obliged to make an order of eviction; he 'may' make it. It is, therefore, that he has to consider whether the addressee should be evicted. He is obliged, if he makes an order of eviction, to record his reasons. The Estate Officer's order must, therefore, state why he is satisfied that the addressee is in unauthorised occupation of public premises and why he should be evicted therefrom. The validity of the Estate Officer's conclusions would be tested in appeal, which is before a District Judge or equivalent judicial officer."

30. It had also been stated that a learned Single Judge of this Court in *W.P.(MD)No.12563 of 2018 G.Rajesh Vs. The Estate Officer-cum-Municipal Commissioner, Nagercoil Municipality, Kanyakumari District*, by an order dated 13.06.2018 had also relied on the aforementioned two judgments and had finally, again in an order under



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Section 4 of the same Act, had stated that the grounds for eviction should be set out in the show cause notice.

31. The learned Senior Counsel therefore, stated that absence to point out the grounds for eviction in the show cause notice, vitiates the show cause notice and cannot pass the scrutiny of this Court.

32. It was pointed out that these factors had been explained in the counter affidavit filed by the respondent herein.

33. In this connection, let me place reliance on the judgment of the Constitution Bench of the Hon'ble Supreme Court reported in *AIR 1978 SCC – 851 Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others*, wherein very specifically with respect to the scope of reasons giving in a counter affidavit beyond the reasons stated notice or order complained had been examined by the Constitution Bench and it had been held as follows :

"The second equally relevant matter is that when a statutory functionary makes an order based on certain



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grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought ,out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (1) "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older:

34. It had been very clearly stated that the reasons cannot be supplemented by fresh statements made in the counter affidavit. It had been conditioned that if permitted, an order bad in the beginning may, by



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the time it comes to court on account of a challenge get validated by additional grounds later brought out.

35. The Constitution Bench had relied on an earlier observation in *AIR 1952 SC- 16*, (cause title) wherein, it had been stated that public orders publicly made, in exercise of statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order, of what he meant, or of what was in his mind, or what he intended to do.

36. In the instant case, the notice had been issued under Section 4(1) of the Act. The learned counsel for the respondent can never expand the provisions to state that the officer actually wanted to issue the notice under Section 4(1- A) of the Act, when it had not been specified by the respondent herein. It cannot be so expanded either by way of argument before the Court or by way of counter affidavit.

37. The Notice under Section 4(1) is a notice under Section 4(1) of the Act. The delay could be explained, but there should be a



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starting point of knowledge of unauthorised occupation. The 'No objection Certificate' is still in force. That has not been interfered with by the respondent. Thus whether the occupation of the petitioner could be termed as unauthorised itself is questionable.

38. Be that as it may, it had also been stated across the bar by both the learned Senior counsel for the petitioner and by the learned Standing Counsel for the respondent that the petitioner could always go over to the office of the respondent and with respect to the area and occupation negotiations could be opened. That is an aspect beyond the purview of this Court and it is always open to both the parties to sit across the table and examine that particular issue. The Court can never state its opinion on the same.

39. The only limited aspect brought before this Court is that the notice was issued under Section 4(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The notice in its form as presented before the Court suffers. The notice is struck down.



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40. The Writ petition Stands allowed. But, as stated by the Division Bench it is always open to the respondent as stated to take further action to protect the property in manner known to law. The Court can never preclude that right of the respondent. At the same time, the petitioner may also, open up discussions with the respondent to regularize a portion of their occupation.

41. These are issues left purely to the discretion and wisdom of the petitioner and the respondent herein. The notice is however struck down.

42. After the order had been dictated, the learned counsel for the respondent stated that it may be stated that the notice had been issued on the ground that the petitioner is in unauthorised occupation. The said statement of the learned counsel is just recorded.



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43. With the above observations, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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

RM



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The Estate Officer Cum Divisional Railway Manager,
Divisional Office,
Works Branch,
Madurai.



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