



W.P.(MD)No.4468 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 09.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.4468 of 2023

and

W.M.P.(MD)No.4208 of 2023

N.Sakthivel

... Petitioner

Vs.

1.The Executive Engineer,
Tamil Nadu Urban Habitat Development Board,
Madurai Circle, No.169, K.K.Nagar Main Road,
Madurai-625020.

2.The Estate Officer,
Tamil Nadu Slum Clearance Board,
Madurai Circle, No.169, K.K.Nagar Main Road,
Madurai-625020.

3.R.Jothi

...Respondents

PRAYER: Petition 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 1st respondent in Na.Ka.No.2506/A3/2022, dated 10.02.2023 and quash the same.



For Petitioner : Mr.C.K.M.Appaji
For R1 & R2 : Mrs.S.Latha,
Standing Counsel

ORDER

(Order of the Court was made by **R.SUBRAMANIAN, J.**)

The petitioner challenges the notice of eviction issued by the respondent on 10.02.2023, purportedly, pursuant to the direction of this Court in W.P(MD)No.931 of 2021.

2.The said writ petition was filed by one Jothi, who claimed that the petitioner herein was the fifth respondent in the said writ petition, had encroached upon the public pathway allotted by Tamil Nadu Urban Habitat Development Board, in its project at Jawaharpuram, K.Pudur, Madurai.

3.Considering the limited scope of the prayer, the Division Bench had disposed of the writ petition with the following observations:

“4.Considering the limited scope of the prayer now sought for by the petitioner, without expressing any opinion on the claim made by the petitioner, this Writ Petition is disposed of with a direction to the respondents 3 and 4, to consider the



representation of the petitioner dated 05.12.2020, if not considered earlier and if there is any encroachment as claimed by the petitioner, appropriate action shall be taken for removal of the same, after affording due opportunity of hearing to the petitioner, fifth respondent and all other parties concerned and also by due process of law, within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.”

4.Claiming to take action pursuant to the said order passed in W.P(MD)No.931 of 2021, dated 23.11.2022, the impugned notice had been issued by the respondents. From the extract of the order of the Division Bench made in W.P(MD)No.931 of 2021, it could be seen that the Division Bench had directed the Board to pass orders after giving an opportunity of hearing to the fifth respondent.

5.A perusal of the impugned notice shows that no such opportunity was given. Straight away the order, requiring the petitioner to vacate and hand over the possession to the Board, had been passed. This is in violation of the order of the Division Bench. While exercising the power to evict a



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person under the Tamil Nadu Urban Habitat Development Board Act, the board had to follow certain procedure. It is clear that such procedure has not been followed before passing the impugned order and the direction of the Division Bench have also been flouted. Hence, the order impugned is set aside. It will be open to the respondents to issue show cause notice to call for explanation from the petitioner and pass orders, after considering the objections of the petitioner, if any. The board will give personal hearing of the petitioner also.

6.In the result, this writ petition is allowed as stated above. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M., J.) & (L.V.G., J.)

09.03.2023

NCC : Yes / No

Index : Yes / No

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