WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :12.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P(MD)No.13837 of 2023
and
W.M.P(MD)Nos.11669 and 11671 of 2023

Yogarajan ... Petitioner

vs.

1.The Tahsildar,
Madurai East Taluk,
Madurai District.

2.The President,
Ilangiyenthal Village Panchayat,
Puduthamaraipatti Post,
Madurai District. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order dated 05.06.2023 served on the petitioner on 10.06.2023 of the second respondent relates to S.No.73/21 and quash the same and consequently forbear the respondents from interfering with the peaceful possession and enjoyment of the house of the petitioner situated at Iangiyenthal Village.

https://www.mhc.tn.gov.in/judis

WEB COPY

For Petitioner : Mr.K.Govindarajan for
Mr.B.Ponnupandi
For R-1 : Mr.S.P.Maharajan,
Special Government Pleader

ORDER

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

Mr.S.P.Maharajan, learned Special Government Pleader, takes notice for the respondents.

2. With the consent of both sides, this writ petition is taken up for final hearing at the admission stage itself.

3. Challenge in this writ petition is to the notice issued by the President of Ilangiyenthal Village Panchayat, dated 05.06.2023.

4. The fear we have expressed in our earlier order dated 28.04.2023 in W.P(MD)No.10500 of 2023, has come true. The conduct of the respondents makes it very obvious that the very object is to help the encroachers and not to remove the encroachments. The order impugned in this writ petition has to be quashed on the sole ground that Section 131 of

https://www.mhc.tn.gov.in/judis

WEB COPY

the Tamil Nadu Panchayat Acts, 1994, does not empower the panchayat President to remove encroachments.

5. We have considered the language of the provision in several judgments and held that the panchayat President can only seek removal of encroachment and if the encroacher does not voluntarily remove the encroachment, the President will have to necessarily approach the Revenue Tahsildar for eviction of encroachment under the Tamil Nadu Land Encroachment Act, 1905. In respect of the very same panchayat, we had, on 21.04.2023, while allowing the writ petition in W.P(MD)No.9527 of 2023, made it clear that the panchayat President will have to necessarily move the Tahsildar for eviction under the Tamil Nadu Land Encroachment Act, 1905.

6. Mr.S.P.Mahararajan, learned Special Government Pleader would however seek to rely upon the judgment of the Division Bench in W.P(MD)No.28660 of 2022 passed in the absence of the alleged encroacher wherein there is a direction to the respondents 3 and 4, to remove the encroachment. It is the duty of the learned Government Pleader who appeared, to bring it to the notice of the Court the correct

https://www.mhc.tn.gov.in/judis

WEB COPY

legal position and the authority empowered to remove the encroachment. We find that this has not been done. In some cases, we come across the undertakings given by the Government Pleaders and Government Advocates to remove encroachments. When we try to ensure such undertakings, the Government Pleaders and the Government Advocates take shelter under the judgment of the High Courts and the Hon'ble Supreme Court which laid down that the Government Pleaders and the Government Advocates are not entitled to give an undertaking on behalf of the Government and their undertaking will not bind the Government. Even if a Division Bench is to direct the authority to remove encroachments, it can only by the authority empowered under the Statute. In the absence of statutory power, even a Division Bench cannot invest the power. Hence, we are not able to accept the submissions of the learned Special Government Pleader based on the judgment of the Division Bench of this Court in W.P(MD)No.28660 of 2022.

7. We find that the notice under Section 7 of the Tamil Nadu Act III of 1905, was issued by the Revenue Officials and the eviction order has been passed by the Panchayat President. We are sure that this has been done for extraneous consideration to help the encroachers. However, being

https://www.mhc.tn.gov.in/judis

WEB COPY

helpless we quash the notice. The writ appeal stands allowed and the impugned notice issued of the second respondent, dated 05.06.2023, is quashed with liberty to the respondents to proceed "**in accordance with law**" if they really want removal of encroachment. No Costs. Consequently, connected miscellaneous petitions are closed.

(R.SUBRAMANIAN, J.) & (L.VICTORIA GOWRI, J.)
12.06.2023

Index : Yes / No
Neutral Citation : Yes / No
pm

To:

1.The Tahsildar,
Madurai East Taluk,
Madurai District.

2.The President,
Ilangiyenthal Village Panchayat,
Puduthamaraipatti Post,
Madurai District.

https://www.mhc.tn.gov.in/judis

WEB COPY

R.SUBRAMANIAN, J.
and
L.VICTORIA GOWRI, J.

pm

ORDER MADE IN
W.P(MD)No.13837 of 2023

DATED :12.06.2023

https://www.mhc.tn.gov.in/judis