



W.P.(MD)No.16494 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2023

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

and

THE HONOURABLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.(MD)No.16494 of 2023

and

W.M.P(MD)No.13792 of 2023

Viswanathan

... Petitioner

Vs.

1.The District Collector,  
Tirunelveli District,  
Tirunelveli.

2.The Block Development Officer,  
Radhapuram,  
Tirunelveli District.

3.The President,  
Karaichuthu Uvari Village,  
Radhapuram Panchayat Union,  
Tirunelveli District.

4.Suyambu

5.Rajan

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned eviction order passed by the third respondent in Na.Ka.No.(NIL) dated 19.06.2023 and quash the same as illegal, malicious and arbitrary.



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|                |                                                    |
|----------------|----------------------------------------------------|
| For Petitioner | :Mr.R.Balakrishnan                                 |
| For R-1        | :Mr.J.Ashok,<br>Additional Government Pleader      |
| For R-2 & R-3  | :Mr.D.Sachikumar,<br>Additional Government Pleader |

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### **ORDER**

(Order of the Court was made by **S.S.SUNDAR, J.**)

Heard Mr.R.Balakrishnan, learned counsel for the petitioner, Mr.J.Ashok, learned Additional Government Pleader for the first respondent and Mr.D.Sachikumar, learned Additional Government Pleader for respondents 2 and 3.

2. Having regard to the nature of the order going to be passed by this Court, notice to respondents 4 and 5, is dispensed with.

3. The petitioner has challenged the notice issued by the President of Karaichuthu Uvari Village, purported to have been issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905.



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4. The learned counsel appearing for the petitioner would submit that the third respondent has no power or jurisdiction to initiate action for removal of encroachment under the Tamil Nadu Land Encroachment Act.

5. The learned Additional Government Pleader appearing for the third respondent is unable to produce before this Court any order of the first respondent or the Government empowering the President to initiate action even if the encroachment is on a public pathway. However, the learned Additional Government Pleader, on instructions, would submit that there is no Government Order specifically authorizing the Block Development Officer or the President to initiate action for removal of encroachment.

6. Though Section 131(2) of the Tamil Nadu Panchayats Act, 1994, specifically deals with the obligation of the Executive Authority or the Commissioner of Panchayats to initiate proceedings under Section 131(2) of the Tamil Nadu Panchayats Act, the power which is required to accomplish such removal as provided under the Tamil Nadu Land Encroachment Act or any other enactment, has not been given to the local body.



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7. Therefore, this Court directs the Tahsildar, Radhapuram, to take action if there is any encroachment in the public pathway. Before initiating any action under the provisions of the Tamil Nadu Land Encroachment Act, the Tahsildar, Radhapuram, is directed to conduct a survey after issuing due notice to the petitioner as well as the respondents 4 and 5, to find out whether the respondents 4 and 5 are in encroachment of any portion of public pathway. The survey shall be conducted within a period of six weeks from the date of receipt of a copy of this order. Depending upon the outcome of the survey, further proceedings shall be initiated within a period of four weeks from the date on which the report drawn by the Tahsildar is furnished to the petitioner and respondents 5 and 6.

With the above direction, this writ petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [D.B.C., J.]  
10.07.2023

Index : Yes / No  
NCC : Yes/No

pm



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- To
- 1.The District Collector,  
Tirunelveli District,  
Tirunelveli.
  - 2.The Tahsildar,  
Radhapuram Taluk,  
Tirunelveli District.



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**S.S.SUNDAR, J.**

and

**D.BHARATHA CHAKRAVARTHY, J.**

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