



W.P.(MD)No.16716 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD)No.16716 of 2023

and W.M.P.(MD) Nos.13960, 13961 and 19114 of 2023

Dr.Mohamed Ansar

... Petitioner

Vs.

The Commissioner,
Palani Municipality,
Palani,
Dindigul District.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the respondent in his proceedings in Na.Ka.No.1230/2022/F1 dated 07.07.2023 and quash the same as illegal.

For Petitioner : Mr.M.Ajmalkhan,
Senior Counsel for M/s.Ajmal Associates

For Respondent : Mr.K.Hemakarhikeyan
Standing Counsel



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ORDER

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

The notice issued by the Commissioner, Palani Municipality in proceedings dated 07.07.2023 for removal of encroachment and unauthorized construction is challenged in the present writ proceedings.

2. The petitioner was identified as an alleged encroacher and on such identification the impugned notice has been issued by the Municipality.

3. Learned Senior Counsel appearing on behalf of the writ petitioner mainly contended that a civil suit has already been instituted for the relief of declaration and injunction in O.S.No.364 of 2022 on the file of Additional District Judge, Palani, which is pending and an interlocutory application filed seeking interim injunction is also pending.

4. It is the contention of the learned Senior Counsel for the appellant that the Municipality has already issued an order of communication stating that the suit is pending and therefore, they have deferred further actions and contrary to the



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said communication the impugned notice has been issued asking the petitioner to remove the alleged encroachments and thus, the present Writ Petition is filed.

5. Mere institution of a civil Suit would not be a ground to stall the eviction proceedings under the Tamil Nadu Land Encroachment Act, 1905 or under the relevant provisions of the District Municipalities Act, 1920 or the Tamil Nadu Urban Local Bodies Act, 1998.

6. All these special enactments confer powers to the competent authority to identify the encroachments and issue notice and thereafter, proceed with the removal of the encroachments. Thus, pendency of the civil Suit cannot be a bar for the authorities to invoke the provisions of the Special Enactments to remove the encroachments.

7. It is for the petitioner to workout his remedy in the civil Suit, which is pending. That being a different action, the power conferred under the Statute is to be exercised in the manner contemplated and by following the procedures. In the present case, the notice has already been issued through the impugned proceedings dated 07.07.2023.



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8. Therefore, the petitioner is at liberty to submit his objections / explanations within a period of ten days from the date of uploading of this order copy in the High Court Website and thereafter, the respondents shall proceed with further actions by identifying the encroached portion of the land or the unauthorized building as the case may and remove it.

9. With these directions, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

(S.M.S., J.) & (V.L.N., J.)
05.12.2023

NCC : Yes / No
Index : Yes / No
SJ



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AND

V.LAKSHMINARAYANAN, J.

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