



W.P.(MD)No.17791 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2023

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P(MD)No.17791 of 2023
and
W.M.P(MD)No.14853 of 2023

Mariyaye

... Petitioner

Vs.

1.The Tahsildar,
Musiri Taluk,
Trichy District.

2.The President,
Sittalarai Panchayat,
Musiri Taluk,
Trichy District.

... 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 order passed by the second respondent vide his proceedings Na.Ka.No.A1/01/2022 dated 08.07.2023 and quash the same as illegal.

For Petitioner :Mr.T.Leninkumar

For Respondents :Mr.T.Villavankothai,
Additional Government Pleader



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ORDER

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

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

2. This writ petition has been filed by the petitioner challenging the order passed by the Panchyat President directing the petitioner to remove the encroachment from a public pathway.

3. From the impugned order, it is seen that no opportunity was given to the petitioner. The petitioner states that she is not in encroachment of any public land and that, she is residing there for a long number of years by paying property tax and other statutory dues to the local body.

4. This Court has time and again insisted the requirement of show-cause notice before evicting a person by initiating summary proceedings contemplated under any statute. Therefore, the impugned



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order is liable to be quashed on the ground that there is violation of principles of natural justice.

5. It is also to be noted that though the President of a Panchayat has power as per 131 of the Tamil Nadu Panchayat Act, 1994, for removal of encroachment in public pathway, such power is not absolute and he cannot pursue further to get possession from the encroacher.

6. In view of the above, this Court is inclined to pass the following order:

(a) This writ petition is allowed and the impugned order passed by the President of Sittalarai Panchayat, Musiri Taluk, vide proceedings dated 08.07.2023, is quashed;

(b) The first respondent is directed to conduct a survey after issuing notice to the petitioner as well as the second respondent;



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(c)After conducting a survey, the Tahsildar may draw a report on the survey with specific findings as to whether there is any encroachment by the petitioner or anyone in the public pathway;

(d) In case, the Tahsildar finds that there is encroachment by the petitioner or anyone in the public pathway, furnish a copy of the report drawn by him earlier and proceed further in accordance with law under the Tamil Nadu Land Encroachment Act, 1905; and

(e) The entire exercise shall be commenced and completed within a period of sixteen weeks from the date of receipt of a copy of this order.

No Costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [D.B.C., J.]
24.07.2023

Index : Yes / No
NCC : Yes/No

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To:
WEB COPY

- 1.The Tahsildar,
Musiri Taluk,
Trichy District.
- 2.The President,
Sittalarai Panchayat,
Musiri Taluk,
Trichy District.



WEB COPY



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S.S.SUNDAR, J.

and

D.BHARATHA CHAKRAVARTHY, J.

pm

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