



WEB COPY

W.P.(MD) No.18383 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2023

CORAM:

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

**W.P.(MD) No.18383 of 2023
and
W.M.P.(MD) No.15260 of 2023**

M.Hemalatha

... Petitioner

-vs-

1.The District Collector
The Collectorate Campus
Theni District

2.The Municipality Commissioner
Chinnamanur Town, Theni District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned notice in Na.Ka.No.2685/2023/F1, dated 18.07.2023, on the file of the second respondent and quash the same as illegal and consequently for a direction directing the respondents to cancel the patta which was illegally



W.P.(MD) No.18383 of 2023

WEB COPY

changed on the name of the second respondent within a time stipulated by this Court.

For Petitioner : Ms.B.Bhuvaneshvari

For Respondents : Mr.D.Sachi Kumar
Additional Government Pleader for R1
Mr.Hema Karthikeyan for R2

ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

Mr.D.Sachi Kumar, learned Additional Government Pleader, takes notice for the first respondent and Mr.Hema Karthikeyan, learned counsel, takes notice for the second respondent.

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

3. This writ petition is filed challenging the order dated 18.07.2023, passed by the second respondent under Section 128(a)(b) of the Tamil Nadu Urban Local Bodies Act, 1998 (for brevity, “the Act”), directing the petitioner to remove encroachment, within seven days.



W.P.(MD) No.18383 of 2023

WEB COPY

4. This Court finds that in the impugned order, there is no reference to issuance of show cause notice to the petitioner before passing the impugned order directing removal of encroachment.

5. Learned counsel for the petitioner states that the property, from which the alleged encroachment is directed to be removed, is in petitioner's possession and enjoyment and it is a patta land and that the respondents, without any notice to the petitioner, have wrongly classified the same as if it is reserved for public purpose. Learned counsel for the petitioner then pointed out that the impugned order is quite contrary to Section 128(1)(a)(b) of the Act.

6. Section 128(1)(a)(b) of the Act reads as follows:

“128. Power to remove encroachment from public place.- (1) The Commissioner may,-

(a) remove without any notice any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching street or public place or the land belonging to or vested with the municipality within the municipal limit.



WEB COPY



W.P.(MD) No.18383 of 2023

(b) remove any immovable structure whether permanent or of temporary nature encroaching the street or public place or the land belonging to or vested with the municipality within the municipal limit, after issuing a show cause notice for such removal, returnable with a period of seven days from the date of receipt thereof:

Provided that the Commissioner shall consider any representation received within the time limit, before passing final orders.”

7. This Court finds that since the petitioner has put up a construction in the property, from which encroachment is directed to be removed by the second respondent, issuance of show cause notice is mandatory as per Section 128(1)(b) of the Act. Hence, the impugned order passed by the second respondent is in violation of the principles of natural justice and in violation of Section 128(1)(b) of the Act.

8. In the said circumstances, this writ petition is allowed and the impugned order dated 18.07.2023, passed by the second respondent, is quashed. However, liberty is given to the respondents to pass eviction order afresh in accordance with law, after a survey being conducted in the presence



W.P.(MD) No.18383 of 2023

WEB COPY

of the petitioner with reference to the layout plan already prepared by the Tahsildar concerned, since it is stated by the respondents that the petitioner has encroached the land, which is reserved for public purpose in a layout for providing house sites for Adi-Dravidars. Thereafter, if the petitioner is found to be in encroachment, the respondents are directed to issue show cause to the petitioner calling for her objections and if any objection is received from the petitioner, the respondents shall consider the same and pass orders on merits and in accordance with law. Such an exercise shall be completed within a period of six 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.]

31.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

krk

To:
The District Collector,
The Collectorate Campus,
Theni District.



WEB COPY



W.P.(MD) No.18383 of 2023

S.S.SUNDAR, J.
and
D.BHARATHA CHAKRAVARTHY, J.

krk

W.P.(MD) No.18383 of 2023
and
W.M.P.(MD) No.15260 of 2023

31.07.2023