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W.P.(MD) No.19760 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.08.2023

CORAM:

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

**W.P.(MD) No.19760 of 2023
and
W.M.P.(MD) No.16312 of 2023**

V.Sureshkumar

... Petitioner

-vs-

The Commissioner
Kovilpatti Municipality
Kovilpatti-628 501
Thoothukudi District

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the entire record pertaining to the impugned notice issued by the respondent in Na.Ka.No.2110/2022/F1, dated 09.08.2023 and quash the same.

For Petitioner : Mr.P.M.Vishnu Varthanan

For Respondent : Mr.J.Parekh Kumar



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ORDER

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

Mr.J.Parekh Kumar, learned counsel, takes notice for the 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 09.08.2023, purported to have been issued by the respondent under Section 128 of the Tamil Nadu Urban Local Bodies Act, 1998 (for brevity, “the Act”).

4. Though the petitioner has raised several grounds on merits, this Court is convinced that before passing the impugned order, no show-cause notice was issued to the petitioner to show-cause as to why the encroachment made by him cannot be removed as the same is unauthorized.

5. The petitioner states that no proper survey and measurement was taken in his presence before initiating action.



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6. In the said circumstances, this Court finds that this writ petition can be allowed solely on the ground of violation of principles of natural justice. However, this Court directs the Commissioner, Kovilpatti Municipality / respondent to conduct a survey and inspection through the Tahsildar concerned in the presence or after issuing notice to the petitioner to fix the boundary of the street as well as the property of the petitioner. After conducting a survey and inspection, if the petitioner is found to be in encroachment of any portion of the road, it is open to the respondent to issue a show-cause notice under Section 128 of the Act to the petitioner and pass final orders on merits and in accordance with law, after considering the objections, if any received from the petitioner. Such an exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

7. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.]

[D.B.C., J.]

14.08.2023

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



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