



W.P.(MD)No.21109 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2023

CORAM:

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

W.P(MD)No.21109 of 2023
and
W.M.P(MD)Nos.17509 & 17511 of 2023

R.Sudhakar

... Petitioner

Vs.

The Executive Engineer, (Projects)
Madurai Corporation,
Anna Maligai,
Madurai.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records relate to the impugned order of eviction issued by the respondent in MATHI/008888/2023 dated 14.08.2023 and quash the same as illegal.

For Petitioner :Mr.M.Mahaboob Athiff

For Respondent :Mr.S.Vinayak



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ORDER

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

Mr.S.Vinayak, 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 impugned order passed by the Executive Engineer of Madurai Corporation, who is the respondent in this writ petition, directing the petitioner to remove the encroachment, which according to him, is in a public street vest with the Corporation.

4. The learned counsel appearing for the petitioner relied upon Section 118(6) of the Tamil Nadu Urban Local Bodies Act, 1998. The said section states that the power to seek eviction of encroacher in public road is only available to the Commissioner and that the respondent is not

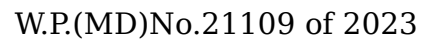


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competent to exercise the jurisdiction of Commissioner under Section 118(6) of the Tamil Nadu Urban Local Bodies Act, 1998.

5. Having regard to Section 118(6) of the Tamil Nadu Urban Local Bodies Act, 1998 and Section 129(8) of the Act, this Court has no difficulty in holding that the respondent is not an authority specified to remove the encroachment in public street or in any property vest with the local body. Therefore, the impugned order is quashed on the short ground that without any jurisdiction, the respondent has issued the impugned notice.

6. Accordingly, this writ petition is allowed and the impugned notice, dated 14.08.2023 is set aside. However, liberty is given to the Commissioner to initiate appropriate action for removing the encroachment after following the procedure prescribed and the manner known to law. It is needless to say that before initiating the action, the respondent shall cause a survey and inspection through the Town Surveyor concerned to fix the boundary of the street as well as the property of the petitioner after issuing notice to the petitioner. After



7. In the result, the writ petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

Index : Yes / No
NCC : Yes/No

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To

- 1.The Executive Engineer, (Projects)
Madurai Corporation,
Anna Maligai,
Madurai.
- 2.The Commissioner,
Madurai Corporation,
Madurai.



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S.S.SUNDAR, J.

and

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