



W.P.(MD)No.24450 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD)No.24450 of 2023

and

W.M.P.(MD)No.20641 of 2023

V.Lakshmi

... Petitioner

Vs.

1.The District Collector,
Theni District.

2.The Revenue Divisional Officer,
Uthamapalayam, Theni District.

3.The Tahsildar,
Taluk Office,
Bodinayakanoor Taluk, Theni District.

4.The Revenue Inspector,
Rasingapuram, Bodinayakanoor Taluk,
Theni District.

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5.The Village Administrative Officer,
Po.Meenakshipuram, Bodinayakanoor Taluk,
Theni District.

6.The Executive Officer,
Town Panchayat, Po.Meenakshipuram,
Bodinayakanoor Taluk, Theni District.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 6th respondent vide his proceedings in Na.Ka.No.246/2022/a1, dated 27.09.2023 and quash the same as illegal.

For Petitioner : Mr.K.Saravanan

For R1 to R5 : Mr.N.Satheesh Kumar

Additional Government Pleader

For R6 : Mr.T.Amjadkhan, Government Advocate

ORDER

(Order of the Court was made by ***V.LAKSHMINARAYANAN, J.***)

The order impugned in the Writ Petition is an order, directing the petitioner to remove the encroachment. Prior to passing such an order, it is asserted by the petitioner that no show cause notice was issued.



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2.The learned Additional Government Pleader appearing on behalf of the respondents 1 to 5 also states that show cause notice as required under Section 128(1) of the Tamil Nadu Urban Local Bodies Act, 1998 (hereinafter referred to as 'the Act') was not issued.

3.A person, even if he is an encroacher, as per law, is entitled to put on notice and thereafter only, final order should be passed. It is not only a requirement of principles of natural justice but as per the statute. That not having been done, the impugned order is to be set aside and accordingly, it is set aside.

4.The learned Government Advocate appearing on behalf of the 6th respondent would submit that prior to the impugned order, survey was conducted and it was found that the petitioner is an encroacher.

5.Therefore, the records on the basis of which, the respondents have come to the conclusion that the petitioner is an encroacher will also put to the petitioner and his response will also be obtained. Thereafter, the 6th respondent is at liberty to initiate proceedings under Section 128(1) of the Act.



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6. With the above observations, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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

10.10.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

Yuva

To

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AND

V.LAKSHMINARAYANAN, J.

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