



WEB COPY



W.P.No.33303 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.33303 of 2024

Prabhu
S/o.Saminathan

... Petitioner

Vs.

1. The District Collector
District Collector Office
Salem District.
2. The Commissioner
Mettur Municipality
Mettur, Salem District.
3. Kamala
W/o. Late Palanisamy
4. Raja
S/o. Late Palanisamy

... Respondents

Prayer :

Writ Petition filed under Article 226 of The Constitution of India
praying to issue a Writ of Mandamus to direct the 2nd respondent to remove
the encroachment made by the 3rd and 4th respondents in public street at

Page Nos.1/7



WP.No.33303 of 2024

T.S.No.2/22, Block 27, T.S. Ward A, Pillaiyar Kovil Street, Metturdam, Mettur Municipality, Salem District, based on eviction notice issued by the 2nd respondent vide his proceedings in Na.Ka.No.3073/2024/F1 dated 23.09.2024 and by considering the petitioner's representations dated 16.08.2024 and 12.10.2024 in accordance with law within the time.

For Petitioner : Ms.S.Rithika
For Respondents : Mr.T.K.Saravanan
Government Advocate, for R1
Mr.C.Selvaraj
Additional Government Pleader
for R2

ORDER

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

Captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity} pertains to alleged encroachment by R3 and R4 (private respondents) in what according to writ petitioner is public street at 'T.S.No.2/22, Block 27, T.S. Ward A, Pillaiyar Kovil Street, Metturdam, Mettur Municipality, Salem District' {hereinafter 'said land' for the sake of brevity}.

2. Issue notice to official respondents.



WP.No.33303 of 2024

3. Mr.T.K.Saravanan, learned Government Advocate accepts notice for R1 and Mr.C.Selvaraj, learned Additional Government Pleader accepts notice for R2.

4. Mr.C.Selvaraj, learned Additional Government Pleader for R2 submits that a 'notice dated 23.09.2024 bearing reference Na.Ka.No.3073/2024/F1' under Section 128 of 'Tamil Nadu Urban Local Bodies Act, 1998 (Tamil Nadu Act 9 of 1999)' {hereinafter 'impugned notice' and 'TNULB Act' for the sake of brevity}' has been issued. To be noted, this notice has been enclosed in the typed set of papers by writ petitioner.

5. Adverting to impugned notice, learned counsel for R2 submits that noticee has been given an opportunity to show cause and if there is any representation, an order will be made on the same. This is in the light of the proviso to Section 128(1)(b) of TNULB Act which 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] with the municipal limit;



WP.No.33303 of 2024

(b) remove any immovable structure whether permanent or of temporary nature encroaching the street or public place or the [land belonging to municipality or vested with the municipality] within the municipal limit, after issuing a show cause notice for such removal, returnable within 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.

(2) Whoever makes any encroachment in any land or space (not being private property) in any public street or any [land belonging to or vested with the municipality] within the municipal limit, shall, on conviction, be punished with imprisonment which shall not be less than one year but which may extend to three years and with fine which may extend to [fifty thousand rupees]:

Provided that the Court may, for any adequate or special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year.'

6. Owing to the limited scope of captioned WP, with the consent of learned counsel for writ petitioner and two State Counsel, main WP was taken up in the Admission Board itself making it clear that rights and contentions of private respondents will be preserved.



WP.No.33303 of 2024

7. As regards the suit being O.S.No.180 of 2024 filed in the Court of District Munsif, Mettur, the same really does not have legs to stand in the light of Section 149 of TNULB Act which reads as follows:

'149. Bar of jurisdiction of Courts. - No Civil Court shall have jurisdiction to decide or deal with any question which is by or under this part required to be decided or dealt with by the Government or the Commissioner.'

8. A careful perusal of the plaint brings to light that the suit has been filed seeking a declaration that impugned notice is null and void and consequential permanent injunctions have been sought. Therefore, as regards the suit, the question of preserving rights of R3 does not arise. It will suffice to say that the Civil Court jurisdiction is barred. However, we hasten to add that rights and contentions of R3 and R4 are preserved as regards their responses to impugned notice. Learned counsel for R2 submits that after considering the responses, orders will be passed and further action will be depending on / subject to orders and that the exercise will be completed as expeditiously as the business of R2 would permit but in any event within seven weeks from today i.e., by 03.01.2025.



WP.No.33303 of 2024

Recording the stated position of learned State Counsel, captioned WP

is disposed of as closed. There shall be no order as to costs.

(M.S.,J.)

(K.R.S.,J.)

15.11.2024

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

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To

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District Collector Office
Salem District.
2. The Commissioner
Mettur Municipality
Mettur, Salem District.



WEB COPY



WP.No.33303 of 2024

M.SUNDAR, J.,

and

K.RAJASEKAR, J.,

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W.P.No.33303 of 2024

15.11.2024

Page Nos.7/7