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W.P. No. 36364 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 04.03.2024**

**CORAM**

**THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU**

**W.P. No. 36364 of 2023  
and  
W.M.P. Nos. 36355 and 36356 of 2023**

E.Mariyappan

... Petitioner

-VS-

1. The District Collector,  
Chengalpattu District.
2. The Block Development Officer,  
Chithamur Block Development Officer,  
Chithamur Panchayat Union,  
Chengalpattu District.
3. The President,  
Chunampedu Village Panchayat,  
Chithamur Panchayat Union,  
Chengalpattu District.

... Respondents

**Prayer:-** Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to Impugned Notice dated Nil passed on Resolution No. 22 issued by the Third Respondent and to quash the same and to direct the Respondents not to interfere with the Petitioner's peaceful possession and enjoyment of the Shop No. 8 situated at Muthalamman Koil Street, Chunampedu Village Panchayat, Chithamur Panchayat Union, Chengalpattu District without following due process of law.



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For Petitioner : Mr. R.Ragavendran

For Respondents : Mr. S.Prabhakaran (for R1 & R2)

Mr. S.Ravikumar (for R3)

## ORDER

Heard Mr. R.Ragavendran, Learned Counsel for the Petitioner, Mr. S.Prabhakaran, Learned Counsel appearing for the First and Second Respondents and Mr. S.Ravikumar, Learned Counsel appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. It is the case of the Petitioner that he is in occupation of Shop No. 8, Muthalamman Koil Street, Chunampedu Village Panchayat, Chithamur Panchayat Union, Chengalpattu District belonging to the Third Respondent and that the said building is structurally sound and does not require any demolition, but the Third Respondent was contemplating with *malafide* intention to evict him from there. In that backdrop, the Third Respondent by notice communicated the Resolution No. 22 dated 01.11.2023 passed by the Village Panchayat of the decision taken to demolish the existing dilapidated building of



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the market and other encroachments from there and the Petitioner and other such persons were called upon to vacate from the premises in their respective occupation within seven days therefrom, which is challenged in this Writ Petition.

3. Though the Petitioner claims that he had been inducted into the shop by the Third Respondent as a lessee in the tender conducted and its tenure has already expired, he has been in continuance of occupation of that shop thereafter without any extension in writing, which necessarily leads to the inference that the legal character of the Petitioner's possession of the shop had to be attributed to the jural relationship of Lessor and Lessee between the Petitioner and the Third Respondent arising out of lease created by oral agreement accompanied by delivery of possession, falling within the purview of second para of Section 107 of the Transfer of Property Act, 1882 (hereinafter referred to as 'the TP Act' for short), as declared in the authoritative pronouncement of the Hon'ble Supreme Court of India in ***Anthony -vs- K.C.Ittoop & Sons*** [(2000) 6 SCC 394], which holds the field. This would obviously mean that in terms of Section 106 of the TP Act, the lease (except for agricultural or manufacturing purposes) shall be deemed to be from month to month terminable, on the part of either lessor or lessee, by 15 days notice.



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4. Having regard to the aforesaid legal position coupled with the fact situation of this case, the impugned notice of the Third Respondent in furtherance to the Resolution No. 22 dated 01.11.2023 passed by his Village Panchayat would have to be treated as termination of the lease in favour of the Petitioner on the expiry of seven days therefrom, which satisfies the requirements of Section 106 of the TP Act. Consequently, the dispute raised by the Petitioner relating to the structural stability of the building would be irrelevant for termination of the monthly lease of the property and he cannot have any grievance in that regard.

5. The next question arises as to the manner in which the Petitioner would have to be evicted from the premises on his failure to hand over possession to the Third Respondent. In this context, reference may be made to the dictum laid down by the Full Bench of this Court in ***Ramaraju -vs- The State of Tamil Nadu*** [2005 (2) CTC 741], which is reproduced below:-

|       |                                                                                                                                                                                         |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 38(6) | If the encroachment is on the land belonging to the Local Authorities, but such land is not part of the road or road margin or roadside land, eviction can be effected by following the |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



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procedure contemplated in law, namely, either by taking recourse to the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 or any other law applicable or otherwise by taking recourse to Civil Courts and not by use of unilateral force.

Further Rule 319 of the Tamil Nadu Urban Local Bodies Rules, 2023, provides as follows:-

**319. Occupation of a municipal land or building or of a land or building vested in the municipality without a licence or lease.—** If the occupation of a municipal land or building or of a land or building vested in the municipality is without a licence or lease or continues beyond the period of the said licence or lease, the occupant shall be liable to be evicted under provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 (Tamil Nadu Act 1 of 1976).

As per Section 2(g) of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975, 'unauthorised occupation' includes the continuance in occupation by any person of the public premises, after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises, has been determined for any reason



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whatsoever. This would reflect that the Third Respondent has to resort to the aforesaid procedure for evicting the Petitioner from the shop occupied by him.

In the upshot, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

04.03.2024

Index: Yes/No

NCC: Yes/No

**Note: Issue order copy by 31.05.2024.**

pal

To

1. The District Collector,  
Chengalpattu District.
2. The Block Development Officer,  
Chithamur Block Development Officer,  
Chithamur Panchayat Union,  
Chengalpattu District.
3. The President,  
Chunampedu Village Panchayat,  
Chithamur Panchayat Union,  
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**P.D. AUDIKESAVALU, J.**

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