



W.P(MD)No.202 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.202 of 2024
and
W.M.P(MD)No.226 of 2024

S.Jebakani

... Petitioner

VS.

The Commissioner,
Nagercoil Municipality,
Nagercoil
Kanyakumari District.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the respondent vide proceedings No.Nil – North Region, dated 02.01.2024 and to quash the same as illegal and consequently direct the respondent to comply with the order passed in W.P(MD)No.30039 of 2023, dated 18.12.2023.

For Petitioner

: Mr.D.Saravanan

For Respondent

: Mr.Veera.Kathiravan
Additional Advocate General
Assisted by
Mr.F.Deepak



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ORDER

(Order of the Court was made by D. KRISHNAKUMAR, J.)

Prayer in this Writ Petition is to quash the impugned order issued by the respondent vide proceedings No.Nil – North Region, dated 02.01.2024 and consequently to direct the respondent to comply with the order passed in W.P(MD)No.30039 of 2023, dated 18.12.2023.

2.Earlier the petitioner filed a Writ Petition in W.P(MD)No.30039 of 2023 seeking to quash the notice, dated 27.11.2023 issued by the respondent. The Division Bench of this Court, by order dated 18.12.2023 passed the following order:

'4.In the present case, survey has already been conducted and notice was issued and the petitioner has also submitted her objections to the notice. The said objections may be considered by the authorities and still the authorities are of the opinion that the lands are public place encroached upon by the petitioner, there is no impediment to remove such encroachments without any further delay. The said exercise is directed to be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.'



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3.Pursuant to the same, the respondent issued the impugned notice, dated 02.01.2024, to the petitioner to vacate the premises within a period of three days. Challenging the same, the present Writ Petition is filed.

4.When the matter was taken up for hearing today, the learned Additional Advocate General appearing for the respondent would submit that the respondent vide proceedings, dated 08.01.2024, removed the encroachment by demolishing the compound wall.

5.Refuting the same, the learned counsel appearing for the petitioner would submit that the Writ Petition has been filed on 03.01.2024 and the encroachment has been removed on 05.01.2024, after filing of the Writ Petition and the respondent has issued the proceedings only on 08.01.2024.

6.Considering the facts and circumstances of the case, we are of the view that the petitioner has filed the present Writ Petition challenging the impugned notice on 03.01.2024 along with a petition seeking to stay the proceedings of the impugned notice and when the matter came up for hearing on 05.01.2024 for admission, this Court has not granted any



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interim order in favour of the petitioner. Further, it is seen that the impugned notice has been issued pursuant to the earlier order passed by this Court in W.P(MD)No.30039 of 2023 dated 18.12.2023, wherein this Court has directed the authority concerned to consider the objections submitted by the petitioner herein and only thereafter to pass appropriate orders. In such circumstances, we are not inclined to entertain this Writ Petition. However, if the petitioner still claims that she has not at all encroached upon any public property, it is open to her to approach the competent civil Court and work out her remedy in accordance with law, by producing oral and documentary evidence, including the proceedings, dated 08.01.2024. Thereafter, if she succeeds before the civil Court, she can claim for damages for demolition of the compound wall in accordance with law.

7. With the above observation, the Writ Petition is disposed of.

No costs. Consequently, connected Miscellaneous Petition is closed.

[D.K.K.,J.] [R.V.,J.]
19.02.2024

NCC : Yes / No
Index : Yes / No
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To

The Commissioner,
Nagercoil Municipality,
Nagercoil
Kanyakumari District.



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D. KRISHNAKUMAR,J.
and
R.VIJAYAKUMAR,J.

ps

ORDER MADE IN
W.P(MD)No.202 of 2024

DATED : 19.02.2024