



W.P.(MD) No.430 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.01.2024

CORAM:

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

**W.P.(MD) No.430 of 2024
and W.M.P.(MD) No.456 of 2024**

Sri Angayarkanni Avenue
Residents Welfare Association,
Rep. by its President G.Ganesan,
having its Office at:-
No.2, Swami Sivanandam Road,
Aarapalayam Cross Road,
Madurai – 625 016.

... Petitioner

-VS-

1.The Assistant Commissioner,
Corporation of Madurai,
Central Zone No. 3,
Madurai City.

2.The Assistant Engineer,
Ward No. 56,
Madurai Corporation,
Madurai City.

3.N.Kannan

... Respondents



W.P.(MD) No.430 of 2024

WEB COPY

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the final order in the name of Notice issued by the 1st respondent dated 14.12.2023 and quash the same as illegal and consequentially direct the 1st respondent and his subordinates not to be interfere in the subject matter of civil dispute between the petitioner and the 3rd respondent in O.S.No. 1027 of 2022 on the file of Principal District Munsif Court, Madurai Town.

For Petitioner : Mr.R.Gandhi
Senior Counsel for M/s.Gandhi Associates

For Respondents : Mr.K.K.Kannan
Standing Counsel for R1 & R2

ORDER

[Order of the Court was made by D.KRISHNAKUMAR, J.]

This Writ Petition has been filed challenging the notice issued by the 1st respondent dated 14.12.2023, and consequently to direct the 1st respondent and his subordinates not to interfere in the subject matter of civil dispute between the petitioner and the 3rd respondent in O.S.No. 1027 of 2022 on the file of Principal District Munsif Court, Madurai Town.



W.P.(MD) No.430 of 2024

WEB COPY

2. By consent of both sides, the Writ Petition itself is taken up for final disposal at the time of admission itself. Considering the nature of the order proposed to be passed in this Writ Petition, protecting the interests of the 3rd respondent also, notice to the 3rd respondent is dispensed with.

3. According to the petitioner, the small Vinayagar Idol in question was installed 100 years back and the residents of Sri Angayarkanni Avenue used to worship the said idol. Now, suddenly at the instance of the third respondent, the respondent Corporation has initiated action by passing the impugned order to remove the idol from the OSR land. The said order has been passed without opportunity to the petitioner's association and therefore, the impugned order is liable to set aside.

4. We have considered the rival submissions and perused the impugned order passed by the respondent Corporation.

5. The impugned notice dated 14.12.2023 would show that before issuing the same the 1st respondent has provided no opportunity to the petitioner



W.P.(MD) No.430 of 2024

WEB COPY

to present their case and there is violation of Principles of Natural Justice.

Therefore, we are of the view that for the purpose of providing an opportunity to the petitioner to put forth their case, the impugned notice can be treated as a show cause notice.

6. In view of the above, we are inclined to pass the following orders:-

- i. The impugned notice issued by the first respondent dated 14.12.2023 shall be treated as a show cause notice.
- ii. The petitioner is permitted to make their reply within a period of four weeks from the date of receipt of a copy of this order.
- iii. On receipt of the reply, the first respondent is directed to consider the same on its own merits and in accordance with law and pass appropriate orders after affording an opportunity of hearing to the petitioner and the third respondent and others concerned.
- iv. Till such order is passed by the first respondent, no coercive steps shall be taken by the respondents for removal of the alleged encroachment.



W.P.(MD) No.430 of 2024

WEB COPY 7. Accordingly, the Writ Petition is allowed. No costs. Consequently,
connected Writ Miscellaneous Petition is closed.

[D.K.K., J.] [R.V., J.]
09.01.2024

Index : Yes / No
Internet : Yes / No
SJ



WEB COPY



W.P.(MD) No.430 of 2024

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

SJ

W.P.(MD) No.430 of 2024

09.01.2024