



W.P.(MD) No.2651 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2024

CORAM:

THE HONOURABLE **MR.JUSTICE D.KRISHNAKUMAR**

AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.P.(MD)No.2651 of 2024

and

W.M.P.(MD)No.2664 of 2024

J.Devaraj

... Petitioner

-Vs-

1.The District Collector,

Kanyakumari District, Nagercoil.

2.The Tahsildar,

Killiyoor Taluk, Kanyakumari District.

3.The Executive Officer,

Karungal Selection Grade Town Panchayat,

Killiyoor Taluk, Kanyakumari District.

4.The Karungal Selection Grade Town Panchayat,

Represented by its President,

Killiyoor Taluk, Kanyakumari District.

... Respondents



W.P.(MD) No.2651 of 2024

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records related to the impugned proceedings of the 3rd respondent dated 15.11.2023 in Na.Ka.No.453/2022/a2, and the subsequent proceedings dated 23.01.2024 issued in Form-I, Form-II, Form-III under the signature of the 3rd respondent and quash them all.

For Petitioner : Mr.N.Dilipkumar
For R1 & R2 : Mr.N.Satheesh Kumar,
Additional Government Pleader
For R3 : Mr.S.P.Maharajan,
Special Government Pleader

ORDER

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

By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

2.This Court, in similar matter in W.P.(MD)No.2516 of 2024, vide Court order dated 06.02.2024, quashed the eviction notice on the ground that even though the property in question has not been classified as tank, the authorities invoked the provisions under Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. The relevant paragraphs are extracted hereunder:-



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“4. According to the learned counsel for the petitioner, the notice issued by the respondent is per se illegal on the simple ground that the aforesaid notice issued under Form II and III of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, will not apply to the present case since the property in question has not been classified as a tank. Hence, he prays for quashing the impugned notice.

5. Learned Additional Government Pleader appearing for the respondent fairly submitted that the property in question has been classified as road. Hence, the respondent has to invoke the provisions of the other Act for removal of the encroachment.

6. In view of the above submissions, this Writ Petition is allowed and the impugned order in Form – I, II and III dated 23.01.2024, issued by the respondent Panchayat, is quashed. However, the respondent is at liberty to invoke the provisions of the Tamil Nadu Urban Local Bodies Act, 1998, for removing the encroachments, if any. No costs. Consequently, connected Writ Miscellaneous Petition is closed.”

3. In the present case also, the property in question has not been classified as tank. However, the 3rd respondent has initiated proceedings under Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. Therefore, the said decision is squarely applicable to the present case on hand.



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4.In the light of the above, the impugned notices issued by the 3rd respondent are liable to be quashed, accordingly, quashed. This Writ Petition stands allowed with liberty to the respondent concerned to invoke the provisions of the Tamil Nadu Urban Local Bodies Act, 1998, for removing the encroachments, if any. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

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

07.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

Yuva

To

- 1.The District Collector,
Kanyakumari District, Nagercoil.
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