



W.P(MD)No.3309 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.02.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

W.P(MD)No.3309 of 2024
and
W.M.P.(MD)Nos.3300 and 3301 of 2024

A.Mani

... Petitioner

Vs.

The Executive Officer,
Sigampunari Town Panchayat,
Sivagangai District.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned eviction notice in Na.Ka.No.11/2020/A3 dated on 18.01.2024 on the file of respondent and quash the same same as illegal consequently forbear the respondent from evicting the petitioner in S.No.560/69 from Pallan Kundu Orani, Sivagangai without following due process.



W.P(MD)No.3309 of 2024

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.K.Balasubramani,
Spl. Government Pleader.

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ORDER

Heard both sides.

2.According to the local body, the petitioner had committed encroachment in respect of the petition mentioned water body. Notice under Section 128(1)(b) of the Tamil Nadu Urban Local Bodies Act, 1998 has been issued. The said order is put to challenge in this writ petition.

3.The learned counsel for the petitioner states that the authorities can only invoke the provision set out in the Tamil Nadu Land Encroachment Act, 1905. The learned counsel for the petitioner placed reliance on the decision of the Hon'ble Full Bench reported in **2015-5- L.W. 397 (T.K.Shanmugam, Secretary, C.P.I.(M) v. The State of Tamil Nadu)**. He drew our attention to Paragraph No.45 thereof. He



W.P(MD)No.3309 of 2024

called upon this Court to set aside the impugned order and allow the writ petition as prayed for.

4.We are not swayed by the said submission. When the Hon'ble Full Bench pronounced the aforesaid verdict, Tamil Nadu Urban Local Bodies Act, 1998 was not in the statute book. It came to effect only on 13.04.2023. Section 128 of the said Act 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 ;

(b) remove any immovable structure whether permanent or of temporary nature encroaching the street or public place or the [land belonging to 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.



W.P(MD)No.3309 of 2024

(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.”

5. We carefully read the said provision. We have to the conclusion that if any encroachment has been committed on a public place belonging to the local body, the aforesaid provision can very well be invoked. Of course, the authority cannot pass any peremptory order calling upon the noticee to remove the encroachment. It should be preceded by a show cause notice. However, taking note of the special facts and circumstances of the case, we direct that the impugned communication shall be treated as show cause notice. The petitioner is given two weeks time from the date of receipt of a copy of this order to offer his response. Thereafter, the Executive Officer shall pass final order on merits and in accordance with law.



W.P(MD)No.3309 of 2024

WEB COPY

6.This writ petition is disposed of accordingly. No costs.

Consequently, connected miscellaneous petitions are closed.

**(G.R.S.J.) & (B.P.J.)
15.02.2024**

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

The Executive Officer,
Sigampunari Town Panchayat,
Sivagangai District.



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W.P(MD)No.3309 of 2024

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and
B.PUGALENDHI, J.**

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W.P(MD)No.3309 of 2024

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