



W.P.(MD) No.4563 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2024

CORAM:

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

AND

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

W.P.(MD)No.4563 of 2024

and

W.M.P.(MD)No.4402 of 2024

S.Stephen

... Petitioner

-Vs-

The Executive Officer,
Selection Grade Town Panchayat,
Karungal, Kanyakumari District.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order in Form I, II and III dated 21.02.2024 issued by the respondent Panchayat and quash the same.

For Petitioner : Mr.T.Antony Arulraj

For Respondent : Mr.V.Nirmal Kumar,
Government Advocate



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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.The learned counsel appearing for the petitioner submitted that the respondent, without following the procedure as contemplated under Section 128(b) of the Tamil Nadu Urban Local Bodies Act, 1998, passed the impugned order and therefore, the same is liable to be quashed on the ground of violation of principles of natural justice.

3.Mr.V.Nirmal Kumar, learned Government Advocate, who took notice for the respondent, has not refuted the said submission made by the learned counsel appearing for the petitioner.

4.We have gone through Section 128 of Tamil Nadu Urban Local Bodies Act, 1998 and for easy reference, the same is extracted hereunder:-

“Section 128-Power to remove encroachment in public place-

(1) The Commissioner may,-(a) remove without any notice



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any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked exposed or displayed for place, sale or any other thing whatsoever by way of encroaching street or public place or the land belonging to the departments of the Central or State Government within 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 the departments of the Central or State Government 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."

5.We have also perused the impugned order dated 21.02.2024 passed by the respondent, wherein, there is no reference as to whether the petitioner has been served with show cause notice. Therefore, the same is liable to be quashed on the ground of violation of principles of natural justice.

6.At this juncture, the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondent agreed



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that the impugned order may be treated as show cause notice, enabling the petitioner to submit his objections / explanations.

7.In view of the above agreement, the impugned order dated 21.02.2024 passed by the respondent is treated as show cause notice and the petitioner is directed to submit his objection / explanation to the respondent within a period of one week from the date of receipt of a copy of this order and on receipt of such objections, the respondent is directed to consider the same and pass appropriate orders on its own merits and in accordance with law, within a period of six weeks thereafter.

8.With the above direction, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.] & [R.V., J.]
28.02.2024

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

Yuva



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To

The Executive Officer,
Selection Grade Town Panchayat,
Karungal, Kanyakumari District.



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D.KRISHNAKUMAR, J.

AND

R.VIJAYAKUMAR, J.

Yuva

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