



W.P.(MD) Nos.16484 & 16765 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.07.2024

CORAM:

THE HONOURABLE **MR.JUSTICE R.SURESH KUMAR**

AND

THE HONOURABLE **MR.JUSTICE G.ARUL MURUGAN**

W.P.(MD)Nos.16484 & 16765 of 2024

and

W.M.P.(MD)Nos.14275 & 14492 of 2024

R.Saravana Karthikeyan
Thangammal

... Petitioner in W.P.(MD)No.16484 of 2024
... Petitioner in W.P.(MD)No.16765 of 2024

-Vs-

The Commissioner,
Tenkasi Municipality,
Tenkasi, Tenkasi District.

... Respondents in both W.Ps.

COMMON PRAYER: Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the respondent in Na.Ka.No.738/2018/F1, dated 09.07.2024 and quash the same and consequently, to direct the respondent to follow the procedure as contemplated under Tamilnadu Urban Local Bodies Act, 1998 by affording sufficient opportunity to all the parties concerned including the petitioners.



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For Petitioners : Mr.V.Kannan
For Respondent : Mr.P.Athimoolapandian,
Standing Counsel

COMMON ORDER

[Order of the Court was made by *R.SURESH KUMAR, J.*]

In both these Writ Petitions, the orders dated 09.07.2024 issued by the respondent Municipality under Section 128(1)(b) and 128(2) of Tamil Nadu Urban Local Bodies Act, 1998 (hereinafter referred to as 'the said Act') are under challenge.

2.It is the stand of the respondent Municipality as projected by the learned Standing Counsel for the respondent that both the writ petitioners had been in encroachment of the municipality property, ie., street. Therefore, in order to remove such encroachment, one Mohammed Mustafa Yasin had filed Writ Petition in W.P.(MD)No.13341 of 2018 to take action to remove the encroachment, including the encroachment of these two petitioners, where this Court, vide order dated 12.02.2024, directed the respondent Municipality to take necessary action for removal of encroachment by following the procedure as contemplated under the Tamil Nadu District Municipalities Act, 1994.



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3.Pursuant to the said order, notice had been issued on 29.02.2024, directing these petitioners to remove the encroachment themselves within a period of five days. Despite that since they have not removed the encroachments, the present orders dated 09.07.2024 have been issued strictly in accordance with the provisions of the said Act. Therefore, the orders, which are impugned herein, cannot be assailed by the writ petitioners, he contended.

4.However, the learned counsel for the petitioners would submit that both, the orders dated 29.02.2024 and the present order, which is impugned herein dated 09.07.2024 are the order, directing the petitioners to remove such encroachment without giving any opportunity by giving show cause notice as contemplated under Section 128(b) of the said Act.

5.We have gone through the said orders, which are impugned herein as well as the earlier order dated 29.02.2024.

6.As per Section 128(b) of the said Act, the Commissioner may 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



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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 of the notice.

7.Proviso to Section 128(b) also states that the Commissioner of Municipality shall consider any representation received within the time limit, before passing final orders.

8.Therefore, the procedure to be adopted by the Municipal authorities before taking any action for removal of encroachment of the Municipal land since has been clearly stated in Section 128(b) of the said Act, including in the proviso, that should be strictly followed by the Municipal authorities.

9.Here in the case on hand, both the orders dated 29.02.2024 and the present order dated 09.07.2024 are only final order under Section 128(b) of the said Act, but not a show cause notice.

10.Since issuance of show cause notice is mandated under Section 128(b) of the said Act itself, such a procedure scrupulously has to be followed by the Municipality and pursuant to the show cause notice by giving seven days, if any reply is given by the alleged encroacher, that shall also be considered by the



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Commissioner of the Municipality before passing final order of eviction.

However, in the present case, such procedure has not been followed. Hence, we have no hesitation to set aside the impugned orders.

11.In that view of the matter, this Court is inclined to dispose of these Writ Petitions with the following order:-

“(i)that the impugned orders are set aside and the matter is remitted back to the respondent Municipality with a direction that the Municipality shall issue show cause notice immediately to both the petitioners under Section 128(b) of the said Act giving seven days time to the petitioners to reply;

(ii)On receipt of such show cause notice, it is open to the petitioners to give reply by way of representation within a period of seven days;

(iii)Once the petitioners give any reply to the show cause notice, it shall be considered by the Municipality and final order should be passed;



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(iv) Within seven days, if no such reply is given, it shall be

deemed to have been given opportunity by way of show cause notice and time is also lapsed, accordingly, it is open to the respondent Municipality to take action and to pass final order of eviction under Section 128(b) of the said Act; and

(v) These procedures shall be followed by the respondent Municipality and accordingly, they can take action, if there has been any encroachment on the part of the petitioners of the Municipal land.”

12. With these directions and observations, these Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[R.S.K., J.] & [G.A.M., J.]
23.07.2024

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

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Note: Issue Order copy on 24.07.2024.

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To

The Commissioner,
Tenkasi Municipality,
Tenkasi, Tenkasi District.



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AND

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