



W.P.(MD)No.16675 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

and

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.(MD)No.16675 of 2024

and

W.M.P.(MD)No.14440 of 2024

Kasi

: Petitioner

Vs.

1.The Commissioner,
Madurai City Corporation,
Anna Nagar,
Madurai District.

2.The Assistant Commissioner,
Zone – II (North),
Madurai City Corporation,
Madurai District.

3.S.Sathish Kumar

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, to call for the impugned



W.P.(MD)No.16675 of 2024

notice of the second respondent in Na.Ka.No.Ma2E1/005021/2023
dated 08.07.2024 and quash the same as illegal.

For Petitioner : Mr.K.Baalasundaram,
Senior Counsel
for M/s.KBS Law Office
For Respondents 1 & 2 : Mr.K.Sivabalan
Standing Counsel

ORDER

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

Challenging the order dated 08.07.2024, issued by the respondent / Municipal Corporation for the removal of alleged encroachment, which is nothing but a temple under a tree, the petitioner has moved the present writ petition.

2.It is to be noted that already a writ petition in W.P.(MD)No.2365 of 2022 was filed by one Sathish Kumar, ie., third respondent herein, wherein the present petitioner and two others have been impleaded as party respondents. The present petitioner stood as second respondent in the said writ petition where the Division Bench passed an order directing the Municipal Corporation to proceed further in accordance with law after



W.P.(MD)No.16675 of 2024

following the procedures contemplated under Section 128 of “the Tamil Nadu Urban Local Bodies Act, 1998” [In short, “the Act”]. Only pursuant to the said order passed by the Division Bench in the said writ petition, the present move has been taken by the respondent Corporation including issuing an order dated 08.07.2024.

3. Heard the learned Counsel on either side.

4. In view of the order that is going to be passed in this writ petition, notice to third respondent is dispensed with.

5. No doubt, in order to remove the alleged encroachment of temple, it is open to the respondent / Municipal Corporation to take action under the provisions of the Act, wherein Section 128(1) (b) of the Act contemplates that, before taking any final action for removal of encroachment, show cause notice has to be given and also seven days time has to be given. Within the 7 days time, if any reply is received, that shall also be considered by the Commissioner of Corporation under the proviso to Sub-Section (b) of Section 128(1) of the Act.



W.P.(MD)No.16675 of 2024

WEB COPY

6.Here in the case on hand, according to the learned Senior Counsel appearing for the petitioner, the 08.07.2024 notice is not a show cause notice, strictly within the meaning of Section 128 of the Act. Therefore, the procedures contemplated under the provisions of the Act has not been scrupulously followed and hence, indulgence is sought for.

7.We find some force in the said submission of the learned Senior Counsel. However, learned Standing Counsel for the respondent / Municipal Corporation would submit that, only pursuant to the order earlier given by this Court, such a move has been made, but anyhow, if this order is not a show cause notice, it can be treated as a show cause notice and the petitioner can give his reply and thereafter, considering the reply to be given by the petitioner, the same would be decided and final orders would be passed based on which, further action will be taken by the respondent / Municipal Corporation.

8.Having regard to the said stand taken by the learned Standing Counsel for the respondent Corporation and also having regard to the aforestated facts and circumstances of the case in



W.P.(MD)No.16675 of 2024

hand, this Court is inclined to dispose of this Writ Petition with the following order:

“that the impugned order dated 08.07.2024 shall be treated as a show cause notice under Section 128 of the Act and therefore, within 7 days from tomorrow [ie., 25.07.2024], the petitioner is directed to give reply as well as documents to the said show cause notice. If any reply along with supporting documents is given by the petitioner to defend the structure of temple to be retained in the same place, it is for the respondent / Municipal Corporation to consider the same under the proviso to Section 128(1)(b) of the Act and pass final orders thereon. It is needless to mention that depending upon the outcome of the order to be passed by the respondent / Municipal Corporation, the further course of action can be decided and accordingly, can be taken. Till such time, the status quo as on today shall be maintained.”



W.P.(MD)No.16675 of 2024

WEB COPY

9. With these directions and observations, this Writ Petition stands disposed of. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

[R.S.K.,J.] & [G.A.M.,J.]
24.07.2024

Neutral Citation : Yes/No

Index : Yes/No

Internet : Yes/No

MR

Note: Issue a copy of this order by 25.07.2024.



WEB COPY



W.P.(MD)No.16675 of 2024

To

1.The Commissioner,
Madurai City Corporation,
Anna Nagar,
Madurai District.

2.The Assistant Commissioner,
Zone – II (North),
Madurai City Corporation,
Madurai District.



WEB COPY



W.P.(MD)No.16675 of 2024

R.SURESH KUMAR, J.
and
G.ARUL MURUGAN, J.

MR

ORDER MADE IN
W.P.(MD)No.16675 of 2024

24.07.2024