



W.P.(MD)No.19566 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.08.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P.(MD)No.19566 of 2024
and
W.M.P.(MD)No.16593 of 2024**

1.S.Chithra
2.Sanjeevi, S/o. Late. Sakthivel ... Petitioners

-VS-

The Executive Officer,
Andipatti Town Panchayat,
Theni District. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relates to the impugned eviction notice in Na.Ka.No.812/2024 dated 09.08.2024, issued by the respondent and quash the same as it is illegal.

For Petitioners : Mr.R.Suriya Narayanan
For Respondent : Mr.S.P.Maharajan
Special Government Pleader



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ORDER

[Order of the Court was made by R.SUBRAMANIAN, J.]

Challenge in the Writ Petition is to the order passed supposedly under Section 128(1) and (2) of the Tamil Nadu Urban Local Bodies Act, 1998 [hereinafter referred to as "the Act"].

2. A Writ Petition was filed in this Court in W.P.(MD)No.10210 of 2024, seeking Mandamus, directing the respondents 1 and 2 therein to take appropriate action to remove the illegal encroachment made by one O.Raja [the third respondent therein] at Aundipatti Bus Stand. This Court passed the following direction on 26.04.2024:-

"7.This Court is inclined to dispose of the present Writ Petition with the following order:

"There shall be a direction to the second respondent to consider the said representation of the petitioner dated 22.03.2024 and decide the same on merits and in accordance with law, of course, after giving an opportunity of hearing to both the petitioner as well as the third respondent, within a period of four [4] weeks from the date of receipt of a copy of this order." "



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3. Complaining that the directions issued were not complied with, a Contempt Petition was filed in Cont.P.(MD)No.1619 of 2024 and the same is pending. It is, at this stage, the impugned order has been passed.

4. Section 128 of the Act prescribes the procedure for eviction of encroachment and the same 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 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 municipality 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:



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Provided that the Commissioner shall consider any representation received within the time limit, before passing final orders.

(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 less than one year."

5. The procedure prescribed under Section 128(1) of the Act is mandatory and it has to be followed in letter and spirit. Though it is stated that because the Contempt Petition is pending, the respondent has issued the order impugned in the Writ Petition, we are unable to accept such explanation. The Division Bench of this Court had granted four weeks time for the respondent to take action and no action was taken till 09.08.2024 from 26.04.2024. Only after the Contempt Petition was listed and the explanation was sought for from the Executive Officer as to why the order has not been complied with, the order impugned in the Writ Petition has been passed.



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6. Evidently, the procedure prescribed under Section 128 of the Act has not been followed rendering the action taken illegal. Hence, this Writ Petition is allowed. The impugned eviction notice issued by the respondent, dated 09.08.2024, is quashed. The respondent is directed to take steps for eviction strictly in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No
Index : Yes / No
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[R.S.M., J.] [L.V.G., J.]
14.08.2024

To:

The Executive Officer,
Andipatti Town Panchayat,
Theni District.



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