



W.P.(MD) No.20869 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.09.2024

CORAM:

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

W.P.(MD) No.20869 of 2024

and

W.M.P.(MD)Nos.17681 and 17688 of 2024

Natanmai Thirumalai Pillai Annathana Chatra Tharmam,
Rep. By its President,
N.Thirumalai Karpagam (M/63),
S/o.T.K.Natarajan (Late),
No.66, Ranger Office Road,
Cumbum Town,
Uthamapalayam Taluk,
Theni District.

... Petitioner

-VS-

The Commissioner,
Cumbum Municipality,
Theni District.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned notice dated 12.07.2024, under proceedings of reference Na.Ka. 1522/2017/F1, issued by the respondent and quash the same.

For Petitioner : Mr.N.Anandha Padmanabhan, Senior Counsel
For M/s.APN Law Associates
For Respondent : Mr.K.Hema Karthikeyan
Standing Counsel



W.P.(MD) No.20869 of 2024

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ORDER

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

Mr.K.Hemakarthiskeyan, learned counsel, takes notice for the respondent. By consent, this Writ Petition is taken up for final disposal at the admission stage itself.

2.Challenge is to the order made under Section 128 of the Tamil Nadu Urban Local Bodies Act, 1998, dated 12.07.2024.

3.Evidently, the procedure prescribed under the said provision has not been followed. Section 128 requires a show cause notice has to be issued, granting seven days time to the alleged encroacher to give an explanation and any explanation received within the time, should be considered by the authority before passing the order of eviction.

4.The learned counsel for the Municipality would submit that the said procedure was not followed. He would require us to treat the impugned notice as show cause notice.



W.P.(MD) No.20869 of 2024

5.We do not think we should encourage these kind of orders by treating them as show cause notice. When the law is very clear and it provides for a particular procedure for removal of encroachment, we cannot accept any deviation there from.

6.Hence, the Writ Petition is allowed and the impugned notice dated 12.07.2024, is quashed. It is open to the authorities to resort eviction strictly in accordance with procedure prescribed under Section 128 of the Tamil Nadu Urban Local Bodies Act, 1998. No costs. Consequently, connected miscellaneous petitions are closed.

[R.S.M., J.]

[L.V.G., J.]

02.09.2024

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

To

The Commissioner,
Cumbum Municipality,
Theni District.



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W.P.(MD) No.20869 of 2024

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W.P.(MD) No.20869 of 2024

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