



W.P.(MD) No.21811 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2024

CORAM:

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

W.P.(MD) No.21811 of 2024

and

W.M.P.(MD)Nos.18443 and 18444 of 2024

Jeyakumar

... Petitioner

-VS-

1.The District Collector/Monitory Committee,
Thanjavur District,
Thanjavur.

2.The Tahsildar,
Kumbakonam,
Thanjavur District.

3.The Corporation Commissioner,
Kumbakonam Municipal Corporation,
Thanjavur District.

... Respondents

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 of the 3rd respondent in Na.Ka.No.38677/2021/d1, dated 28.08.2024 and quash the same.

For Petitioner	: Mr.R.Maheswaran
For Respondents 1 & 2	: Mr.S.P.Maharajan Special Government Pleader
For 3 rd Respondent	: Mr.M.Rajaraman



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ORDER

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

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Mr.S.P.Maharajan, learned Special Government Pleader takes notice for the respondents 1 and 2. Mr.M.Rajarajan, learned counsel takes notice for the 3rd respondent. By consent, this Writ Petition is taken up for final disposal at the admission stage itself.

2.The challenge in the Writ Petition is to the notice issued by the Commissioner, Kumbakonam Municipal Corporation, purportedly under Section 128(1)(2) of the Tamil Nadu Urban Local Bodies Act, 1998.

3.Section 128(1) deals with removal of movable encroachments. Section 128(2) deals with removal of immovable encroachments by immovable construction or other immovable measures. Section 128(2) requires the Commissioner to issue a show cause notice giving seven days time to the noticee to show cause why the encroachment should not be removed. Proviso to Section 128(2) mandates that any reply received within the time stipulated should be considered and final orders shall be passed. No doubt, the impugned order refers to three different notices issued between 29.03.2022 to 25.02.2022. But action is taken almost two years thereafter.



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4.The learned counsel for the petitioner would submit that those notices were served on the father of the petitioner, who is no more. The father of the petitioner has filed the suit and the same is pending.

5.If the Municipality finds there is an encroachment, which is open to the Municipality to follow the procedure prescribed under law and remove the encroachments, therefore, the impugned notice is quashed. It will be open to the Municipal Corporation to issue proper notice under Section 128(2) and if any objection is received, consider the same and pass orders for encroachments.

6.The Writ Petition is allowed on the above terms. No Costs. Consequently, connected miscellaneous petitions are closed.

[R.S.M., J.]

[L.V.G., J.]

12.09.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes

Mrn



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R.SUBRAMANIAN, J.
and
L.VICTORIA GOWRI, J.

Mrn

To

- 1.The District Collector/Monitory Committee,
Thanjavur District,
Thanjavur.
- 2.The Tahsildar,
Kumbakonam,
Thanjavur District.
- 3.The Corporation Commissioner,
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