



*W.P.(MD)No.17588 of 2018*

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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DATED : 18.11.2024

CORAM:

**THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN**

**W.P.(MD)No.17588 of 2018**

**and**

**W.M.P.(MD)Nos.15463 & 15661 of 2018**

M.Prabhakaran

...Petitioner

-Vs-

1.The District Collector,  
Office of the District Collector,  
Sivagangai District.

2.The Thasildhar,  
Office of the Thasildhar,  
Thiruppuvanam Taluk,  
Sivagangai District.

3.The Superintending Engineer,  
Highways Department,  
Sivagangai,  
Sivagangai District.

4.The Executive Officer,  
Thiruppuvanam Town Panchayat,  
Thiruppuvanam,  
Sivagangai District.

5.The Block Development Officer,  
Thiruppuvanam Taluk,  
Sivagangai District.



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6.The Inspector of Police,  
Thiruppuvanam Police Station,  
Sivagangai District.

...Respondents

**Prayer :** Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents not to demolish the petitioner's Tea stall covered by asbestos sheets in front of Survey No.16/16 on the file of the Nelmudikarai Weekly Market, Thiruppuvanam Town, Sivagangai District, without following the procedure established by law and consequently directing the Revenue Department officers to proceed with O.S.No.30 of 2016 on the file of the District Munsiff Court at Manamadurai, Sivagangai District.

For Petitioner : M/s.R.Udhayakumar

For Respondents : Mr.M.Senthil Ayyanar  
Government Advocate for RR1 to 3, 5  
Mrs.M.Aasha  
Government Advocate(Crl.side) for R6  
Mr.S.Dhayalan for R4

### **ORDER**

This writ petition has been filed directing the respondents not to demolish the petitioner's Tea stall covered by asbestos sheets in front of Survey No.16/16 situated at Nelmudikarai Weekly Market, Thiruppuvanam Town, Sivagangai District without following the procedure.



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2.The petitioner was running a tea shop backside the survey No.16/16 situated at Nelmudikarai Weekly Market, Thiruppuvanam Town, Sivagangai District by putting temporary shed. While being so, the petitioner was declared as encroacher and while pending writ petition, it was removed. Subsequently, the petitioner filed a petition to amend the prayer seeking restoration of his tea stall. Only the ground raised by the petitioner is that the petitioner was not given an opportunity and he was only issued notice before removal of the encroachment. Thereafter, the petitioner is entitled to restore the tea stall.

3.In support of his contention, he relied upon the Hon'ble Division Bench judgment of this Court in the case of **Ramaraju Vs. The State of Tamil Nadu and others** reported in **2005 (2) CTC 741**. The relevant portion of the judgment is extracted as follows:-

*“(1)If the encroachment is on road or road margins, vested in Municipalities, the removal if any is to be effected only after following the procedure contemplated in Chapter IX of the Tamil Nadu District Municipalities Act and more particularly the provisions contained in Section 182 and Section 183(6) Before taking action under Section 182 of the District Municipalities Act, notice in writing giving atleast two weeks time should be served and, if the person avoids to*



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*receive the notice, such notice can be effected by affixure.*

*However, notice by any other means, such as through public annoucement or beating of drums or by general notice in newspapers, may not be sufficient.”*

4.If the procedure as contemplated under law is not followed, the petitioner is entitled for restoration of his tea stall.

5.The respondent has filed counter and the submission made by the learned Counsel appearing for the respondents reveals that the petitioner was not issued any notice while eviction of the encroachment. However, following all the due procedures, by making public announcement(Thandora) and publishing in the popular vernacular dailies, encroachments were evicted only in public interest.

6.Admittedly, the petitioner was not given any notice and was not given any opportunity of hearing before the removal of his encroachment. Further, the statement of the petitioner is that the petitioner was picked up for removal of encroachment due to political vendetta. He also produced the photographs to show that the other shops are running by encroachers.



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7.The learned Counsel appearing for the respondents would submit that after survey, if any encroachment is made, it could be evicted in the manner known to law.

8.In view the above, the respondents 2 to 4 are directed to restore the petitioner's land in Survey No.16/16 at Nelmudikarai Weekly Market, Thiruppuvanam Town, Sivagangai District within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the respondents 2 to 4 are directed to conduct a survey in respect of the subject property, and if found any encroachment by the petitioner as well as others, they are at liberty to issue notice and evict the encroachment under due process of law.

9.With the above said directions, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are also closed.

**18.11.2024**

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



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**G.K.ILANTHIRAIYAN. J,**

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