



W.P.(MD)No.22904 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 26.09.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.22904 of 2024
and
W.M.P.(MD)No.19435 of 2024

Ayyanar

... Petitioner

Vs.

1.The Revenue Divisional Officer,
Periyakulam Taluk,
Theni District.

2.The Tahsildar,
Aundipatti Taluk,
Theni District.

3.The Executive Officer,
Aundipatti Town Panchayat,
Theni District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the order passed by the 3rd respondent in Na.Ka.No. 921/2024 dated 09.09.2024, quash the same as illegal, arbitrary, unconstitutional.



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For Petitioner :Mr.P.Velmurugan

For Respondents :Mr.K.Balasubramani
Special Government Pleader for R1 & R2

: Mr.M.Sarangan for R3

ORDER

Heard both sides.

2. By the impugned order, the third respondent had called upon the petitioner to remove the petition mentioned encroachment. The order has been passed under Section 128(1)(2) of the Tamil Nadu Urban Local Bodies Act, 1998. The said provision is 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 the departments of the Central or State Governments 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 the department of the Central or State Governments 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:

provided that the Commissioner shall consider any representation



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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 the departments of the Central or State Governments 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 twenty 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 of less than one year.”

3. It is obvious that before taking coercive action, the principles of natural justice has to be complied with. The authority is obliged to issue notice. In this case, without issuing notice, the impugned order had been passed straight away. This is clearly incorrect. Hence, we direct that the impugned order shall be treated as show cause notice. The petitioner is given four weeks time to respond. The authority will act as per law thereafter.

4. The Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions is closed.

[G.R.S., J.] [B.P., J.]
26.09.2024

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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G.R.SWAMINATHAN, J

and

B.PUGALENDHI, J.

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To

1.The Revenue Divisional Officer,
Periyakulam Taluk,
Theni District.

2.The Tahsildar,
Aundipatti Taluk,
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