



WP(MD). No.30826 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.S. RAMESH
AND
THE HONOURABLE Dr.JUSTICE A.D.MARIA CLETE

**WP(MD). No.30826 of 2024
and WMP(MD) No.25902 of 2024**

Abdulsalam

... Petitioner

Vs

**1. The District Collector,
Theni District, Theni..**

**2. The Revenue Divisional Officer,
Tamaraikulam, Periyakulam Taluk,
Theni District..**

**3. The Tahsildar,
Periyakulam Taluk Office,
Periyakulam, Theni District..**

**4. The Executive Officer,
Town Panchayat Office,
Devadhanapatti, Periyakulam Taluk,
Theni District..**

... Respondents

PRAYER :- Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the entire records relating to the issuance of impugned notice in



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Na.Ka. No.493/2021/A1 dated 13.12.2024 issued by the 4th respondent and quash the same as illegal and consequently directing the respondents to consider the petitioners explanation dated 07.11.2024 and resolution passed by the village committee.

For Petitioner : Ms.P.Krishnaveni
For Respondents : Mr.S.Shaji Binu for R4
Special Government Pleader
Mr.J.Ashok for R1 to R3
Additional Government Pleader

ORDER

(Order of the Court was made by M.S.RAMESH,J.)

By consent of both sides, the writ petition itself is taken up for final disposal at the stage of admission itself.

2. Final order passed under Section 128(2) of the Tamil Nadu Urban Local Bodies (hereinafter referred to as 'the Act') is put under challenge in the present writ petition.

3. When the Executive Officer was of the view that the petitioner had encroached the horse cart track in S.Nos.982,999,1011,977/1, show cause notice was issued to the petitioner calling for his explanation in this regard. Pursuant to the same, the petitioner herein had submitted a



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detailed reply putting forth all his objections to the said show cause notice. In spite of the objections given, the 4th respondent has now passed the impugned proceedings dated 13.12.2024 under Section 128(2) of the Act directing him to evict from the subject property.

4. The very object of the Act is to extend an opportunity to the encroachers to give their objections with regard to the proposed eviction proceedings. However, while passing such order, there is a duty cast upon them to consider the explanation rendered by the encroachers to the show cause notice.

5. A perusal of the order passed under Section 128(2) of the Act, dated 13.12.2024 reveals that, though the 4th respondent seems to have received the explanation given by the petitioner to the show cause notice, the same has not been considered. We failed to understand as to how the respondents had come to the conclusion that the petitioner is an encroacher, more particularly, when he has raised objections along with the resolution of the panchayat to the proposed eviction proceedings.



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6. In view of the same, the order impugned in the writ petition is deemed to be a non speaking order and hence, cannot be legally sustained. However, we are of the view that the respondents could be granted liberty to consider the petitioner's explanation and then take further course of action.

7. In the light of the above, the writ petition is partly allowed and the impugned order dated 13.12.2024 is quashed and the matter is remitted back to the 4th respondent herein for fresh consideration. The 4th respondent shall consider the petitioner's explanation along with the resolution of the Panchayat and thereafter take further course of action in accordance with the provisions of the Act and pass a speaking order. Such an exercise shall be completed, within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to cost. Consequently connected Miscellaneous Petition is closed.

[M.S.R.,J]

[A.D.M.C.,J]

18.12.2024

NCC : Yes/No

Index : Yes/No

RR



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ORDER
IN
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