

In the High Court of Judicature at Madras

Dated: 14.08.2015

Coram:

The Honourable Mr.Justice SATISH K. AGNIHOTRI
AND
The Honourable Mr.Justice K.K.SASIDHARAN

W.P.No.15074 of 2015
& M.P.Nos.1 and 2 of 2015

V. Ramaiah @ V. Raman ..Petitioner

-Vs.-

The Assistant Executive Engineer
Zone - IX
Corporation of Chennai
No.45/10, Krishnamoorthy Salai
Kodungaiyur
Chennai-600 118.

..Respondent

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the respondent dated 29 April 2015 and made in Na.Ka.No.430/2015 and quash the same and further direct the respondent to hold an enquiry giving an opportunity to the petitioner of being heard.

For Petitioner : Mr. M. Selvam

For Respondent : Mr. R. Arunmozhi

ORDER

(Order of the Court was made by K.K.SASIDHARAN, J)

The challenge in this writ petition is to the order dated 29 April 2015, whereby and whereunder the Chennai Corporation called upon the petitioner to remove the encroachment within a period of one week, failing which it was indicated that further action would be taken in accordance with law.

2. The petitioner is stated to be in possession and enjoyment of the land situated in Tondiarpet High Road, Kodungaiyur, Chennai. He had constructed a building and is stated to be in occupation of the property.

3. While so, Ms.N.Mynavathy filed a writ petition in W.P.No.4121 of 2015 alleging that the petitioner has encroached into a portion of the road situated in T.S.No.77 of Kodungaiyur Village. This High Court passed an order directing the Chennai Corporation to remove the encroachment in question within a period of six weeks. Thereafter, the Chennai Corporation initiated action and the same culminated in passing the order dated 29 April 2015.

4. It is the case of the petitioner that he was not given proper notice by the Corporation before passing the order of eviction which would involve civil consequences to him. The petitioner is therefore before this Court.

5. We have heard the learned counsel for the petitioner and the learned Standing Counsel appearing on behalf of Chennai Corporation.

6. There is no dispute that this Court passed an order on 5 March 2015 directing the Chennai Corporation to remove the encroachment within a period of six weeks after giving notice to the alleged encroachers. The order passed by the Chennai Corporation dated 29 April 2015 does not contain any indication as to whether notice was issued to the petitioner herein and he was given an opportunity of hearing.

7. The petitioner in W.P.No.4121 of 2015 has already filed a contempt petition before this Court bearing No.1391 of 2015 for the purpose of taking action against the Commissioner, Chennai Corporation on account of the failure to remove the encroachment.

8. The impugned order passed by the Chennai Corporation proceeds as if a meeting was conducted on 15 March 2015 and a decision was taken to remove the encroachment. There is nothing on record to show that the respondent considered the objection raised by the alleged encroachers and an order on merits was passed in this matter.

9. Similar matters came up for hearing before us on 13 August 2015 and considering the background facts, we have set aside the order and remitted the matter for fresh consideration.

10. In the result, the impugned order dated 29 April 2015 is set aside. The Joint Commissioner incharge of Zone-1X is directed to consider the matter afresh. The petitioner is given two weeks time from the date of receipt of a copy of this order to submit his objection to the Joint Commissioner treating the impugned order as a show cause notice. The concerned Joint Commissioner is directed to

consider the objection and pass a detailed order on merits. Such exercise shall be completed within a period of two months from the date of receipt of objection. In case the petitioner fails to submit his objection within the stipulated period, it is open to the authority to pass orders on merits and as per law.

11. The writ petition is disposed of with the above direction. Consequently, the connected MPs are closed. No costs.

Sd/-
Asst.Registrar (CSIII)

/true copy/

Sub Asst. Registrar

To

1.The Assistant Executive Engineer
Zone - IX
Corporation of Chennai
No.45/10, Krishnamoorthy Salai
Kodungaiyur
Chennai-600 118.

2.The Joint Commissioner,
Incharge of Zone-IX,
Corporation of Chennai
NO.45/10, krishnamoorthy Salai,
Kodungaiyur,
Chennai-600 118.

+1 cc to Mr.K.MohanaMurali Advocate sr.42944
+1 cc to Mr.M.Selvam Advocate sr.42993

W.P.No.15074 of 2015

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