

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13929 of 2016

And

W.M.P.No.12199 of 2016

I.Fasal Hussain ... Petitioner

Vs.

1.The Municipal Commissioner,
Panruti Municipality,
Panruti.

2.Mr.S.Pandiayan ... Respondents

Prayer:

Petition filed under section 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling upon the records of the first respondent in relation to the notice issued in Na.Ka.No.254/ 2016/F1 dated 15.03.2016 and quash the same as illegal and consequently direct the first respondent to furnish the details of the planning permission issued by him for the property situated at Door No.9/4 Sappani Chetty Street, Panruti, Cuddalore District-607 106.

For Petitioner : Mr.K.Shahul Hameed

For Respondents : Mr.P.V.Selvakumar for R1
Additional Government Pleader

O R D E R

By consent, the writ petition is taken up for final disposal.

2.The writ petition has been filed for issuance of Certiorarified Mandamus calling upon the records of the first respondent in relation to the notice issued in Na.Ka.No.254/ 2016/F1 dated 15.03.2016 and quash the same as illegal and consequently direct the first respondent to furnish the details of the planning permission issued by him for the property situated at Door No.9/4 Sappani Chetty Street, Panruti, Cuddalore District-607 106.

3.The petitioner had filed a writ petition before this Court in W.P.No.1495 of 2016 stating that the second respondent herein had put up an illegal construction in the property bearing Door No.14, Sappani Chetty Street, Panruti, Cuddalore District. In the said writ petition, the Superintendent of Police, Cuddalore, the Inspector of Police, Cuddalore were impleaded as respondents 1 and 3. The first respondent/ the Municipal Commissioner, Panruti was impleaded as the second respondent and the private party/ second respondent herein was impleaded as the fourth respondent. The Special Government Pleader appeared for the Police Authorities and the learned Standing Counsel appeared for the Municipal Commissioner, Panruti Municipality and notice to the private party was dispensed with as no adverse order was to be passed in the writ petition. The Hon'ble Division Bench by order dated 21.01.2016 on perusal of the representation given by the petitioner, held that the dispute between the petitioner and the fourth respondent (second respondent herein) is purely private in nature and therefore, the writ petition was dismissed as not maintainable. Now, the first respondent Commissioner of the Panruti Municipality has directed the petitioner to pay a sum of Rs.10,000/- being the cost which they have incurred for engaging a Standing Counsel. That order is impugned in this writ petition.

4.Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader/ Standing Counsel appearing for the first respondent Municipality.

5.In the light of the order which the Court proposes to be passed, notice to the second respondent is dispensed with.

6.First of all, the first respondent has no jurisdiction to issue a demand as issued by him dated 15.03.2016 for recovery of the legal expenses incurred by the Municipality for engaging a counsel to defend them. It appears that though counsel was engaged by the Municipality in the earlier writ petition, no counter affidavit was filed. The Hon'ble Division Bench dismissed the writ petition on going through the representation given by the petitioner and came to the conclusion that the dispute is a private dispute and therefore, no writ of mandamus can be issued. Thus, prima facie it is clear that the Municipal Commissioner, Panruti Municipality who was the second respondent in the said writ petition had not rendered any assistance to the Hon'ble Division Bench for disposing of the writ petition.

7.That apart, this Court can take judicial notice of the fact that in several writ petitions when Municipal Commissioners are impleaded as parties, they do not respond to the notices issued by the Court nor do they respond to the letter sent by their Standing Counsels/ Government Pleaders and recently, this

Court on coming across one such non-cooperative approach by the Municipal Commissioner, Nallipalayam has recommended disciplinary action against him by directing the Director of Municipal Administration to look into the matter.

8.Further, this Court can take notice of the fact that in several cases, the local bodies though enter appearance through counsel do not give proper instructions to their counsel, do not file counter affidavits on time nor instruct the Government Pleaders/ Standing Counsels with full information. If such is the case, then this Court may be constrained to impose costs on such erring Municipal Commissioners on a daily basis. Hence, the impugned proceedings being perverse exercise of power vested with the Municipal Commissioner is hereby quashed.

9.Accordingly, this writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Municipal Commissioner,
Panruti Municipality,
Panruti.

+ 1 cc to Mr.P.V.Selvakumar, Advocate SR 23699

+ 1 c to Mr.K.Shahul Hameed, Advocate SR 23516

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