

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.43651 of 2016

S.Thiyagarajan .. Petitioner

Vs

1. The District Collector
Vellore District
Vellore.
2. The Divisional Engineer
Highways Constructions and Maintenance
Vellore.
3. The Assistant Divisional Engineer
Highways Constructions and Maintenance
Arakkonam, Vellore District.
4. The Tahsildhar
Arakkonam, Vellore District.
5. The Commissioner
Arakkonam Municipality
Arakkonam, Vellore District. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari calling for the records in relation to the impugned order passed by the fifth respondent in Proceedings Na.Ka.No.2991/15/F1-6, dated 14.12.2016 threatening eviction by force on failure to remove the encroachment forthwith by the petitioner and quash the same as arbitrary and illegal and contrary to the directions of this Court dated 23.03.2016.

For Petitioner

: Mr.Rahul Balaji
for Mr.M.Venkatakrishnan

For Respondents

: Mr.C.Manisankar
Addl. Advocate General
assisted by
Mr.R.Vijayakumar
Addl. Government Pleader

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

In W.P.Nos.37714 and 37715 of 2015, two private petitioners had raised a grievance against the petitioner herein (who was impleaded subsequently as the sixth respondent) alleging encroachment and the Court had issued directions that the notice issued by the respondent authorities dated 14.3.2016 had not given sufficient time to the petitioner herein to respond and, thus, two weeks time was granted for the said purpose, whereafter orders had to be passed in accordance with law against the allegation of encroachment.

2. There has been delay on the part of the respondent authorities to take action which has been explained in contempt proceedings (Contempt Petition No.2183 of 2016) by stating that it was not informed to the Court that the land did not vest with the Highways Department, but with the Municipality. That contempt petition has been closed today.

3. The petitioner claims that within the period of two weeks he had given his response to the third respondent as that was the direction in W.P.Nos.37714 and 37715 of 2015, but no decision has been rendered on the plea raised by him, and on the other hand, the impugned notice dated 14.12.2016 has been issued, which is as under:

"Madras High Court order W.P.No.37714/15, Dated 14.3.2016 and Contempt Petition filed before the High Court, C.P.No.2183/16 and District Collector Letter Na.Ka.No.B4/4186/2016, dated 12.12.2016.

Na.Ka.No.2992/F1-6

Date: 14-12-2016

NOTICE

Notice under Sec:182, 313, 338, 339 and 344(1) of Tamil nadu District Municipalities Act, 1920.

Your occupation of the land belonging to the municipality without any prior permission is objectionable and impermissible one. In this regard, the municipality had issued a notice dated 14.3.2016. Since the encroachments have not been removed till this date, a contempt petition has been filed before the Hon'ble High Court, Madras, C.P.No:2183/2016. Hence you are hereby informed to

remove the encroachments forthwith by yourself. Failing which, the encroachments will be removed with the help of municipality employees on 17.12.2016 at 10.00 A.M. and the cost for the removal will be collected from you.

Encroached Area: No.9, Tiruttani Road, Jothi
Nagar, Arakkonam, Ward-B
Block-4, T.S.No.37

Encroachment
Measurement : 127 Sq. Mtrs.

Nature of Encroachment: Construction of Shop in
the encroached area
without Municipality's
Permission.

Sd/-
Commissioner
Arakkonam Municipality"

4. We have a serious reservation to this notice. The notice purports to be under direction of the High Court in W.P.No.37714 of 2015 and Contempt Petition No.2183 of 2016. This seeks to suggest as if the authorities have no statutory powers but only when the Court directs an order is issued. The fact is the Court had not issued any direction other than for the authorities to proceed in accordance with law. This is not the first time that we are faced with such notices and we have had occasions to comment adversely on notices referring to Court orders rather than statutory provisions. Once the statutory provision has been mentioned in the impugned notice, there was no reason to put a bold heading of the Court proceeding as if the authorities cannot act as per the statute, but only if the Court order is issued. What is disturbing is that this notice is issued at the level of the Commissioner of Municipality and not by a subordinate officer and at least at this level we would have expected a better application of mind.

5. The contents of the notice also say nothing about the response of the petitioner. The impugned notice seems to have been issued hurriedly when the respondents face the contempt proceedings to complete a mere formality to evade the rigours of the contempt. We strongly condemn this approach. We have, thus, no option but to quash the impugned notice dated 14.12.2016 with a direction to the Commissioner/fifth respondent to apply his mind to the notice dated 14.3.2016 and the response of the petitioner thereto (given to the third respondent as that was the direction in W.P.Nos.37714 and 37715 of 2015) and pass a reasoned order on the same to be duly communicated to the

petitioner as well as a copy endorsed to the petitioners in W.P.Nos.37714 and 37715 of 2015. The action be completed within a period of one month from today.

The petition, accordingly, stands disposed of. No costs. Consequently, W.M.P.No.37471 of 2016 is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:

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Vellore District
Vellore.
2. The Divisional Engineer
Highways Constructions and Maintenance
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Arakkonam, Vellore District.

+ 1 cc to M/s. M. Venkatakrishnan, Advocate Sr.74189

W.P.No.43651 of 2016

RK(CO)
Eu 02.1.17

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