

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

And

THE HON'BLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.5936 of 2017
and WMP.No.6345 of 2017

A.Saleem Durani .. Petitioner

vs.

1.The Commissioner,
Mayiladuthurai Municipal Corporation,
Mayiladuthurai.

2.The Assistant Director of Town
and Country Planning,
No.33, 4th Rajappa Nagar,
1st Street, Medical College Road,
Thanjavur-613 007.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in Na.Ka.No.13919/2012/F1 dated 28.02.2017 and quash the same as illegal and against the principles of natural justice and consequently direct the respondents to pass orders on the petitioner representation dated 06.03.2017 in response to the notice under Section 362 of the Tamil Nadu District Municipalities Act, 1920.

For Petitioner : Mr.R.Shivakumar
for M/s.K.M.Vijayan Associates

For Respondents: Mr.P.Srinivas for R1
Mr.A.N.Thambidurai,
Special Government Pleader for R2

O R D E R

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

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner would aver that he has purchased land and building bearing Door No.23/1, Ram Nagar, Mayiladuthurai by way of registered sale deed in Doc.No.2312/2002 on the file

of the Sub-Registrar, Mayiladuthurai for a valuable consideration and the said property was also subjected to statutory levies and also provided with electricity, water and sewerage connection. The petitioner, after purchase, made a request for change of patta and it was also changed in his favour. The petitioner, fearing dispossession at the hands of first respondent without following due process of law, had filed a Suit in O.S.No.119/2011 on the file of the Principal District Munsif Court, Mayiladuthurai and it was decreed, vide judgment and decree dated 27.08.2012 and the appeal filed by the respondent Municipality in A.S.No.29/2013 on the file of the Principal Sub-Court, Mayiladuthurai was also dismissed and aggrieved by the same, the first respondent Municipality has filed S.A.No.161/2015 before this Court and this Court has disposed of the Second Appeal, vide judgment and decree dated 15.11.2016, granting liberty to the first respondent Municipality to proceed against the respondent/petitioner herein in the manner known to law with regard to eviction and taking possession.

3. The learned counsel appearing for the petitioner would submit that the impugned notice dated 28.02.2017 issued under Section 362 of the Tamil Nadu District Municipalities Act, 1920, is per se unsustainable for the reason that the Civil Court has already reached the conclusion in favour of first respondent that the land in question was reserved for public purpose and would further add that on 14.03.2017, the respondent had issued notice under Section 4(1) of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 and in the light of issuance of such notice, the respondent has dropped the proceedings as per the impugned notice and prays for appropriate orders.

4. Per contra, Mr.P.Srinivas, learned counsel appearing for the first respondent Municipality would submit that since the land in question was reserved for public purpose, the respondent Municipality cannot invoke the provisions of The Tamil Nadu District Municipalities Act, 1920 and accordingly, the provisions of The Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 had been invoked and notice has also been issued and further proceedings could not take place on account of pendency of this writ petition and prays for dismissal of this writ petition.

5. This Court has considered the rival submissions and also perused the entire materials placed before it.

6. The petitioner made a challenge to the impugned notice dated 28.02.2017 issued under Section 362 of the Tamil Nadu District Municipalities Act, 1920 and however, the first respondent has subsequently issued a notice dated 14.03.2017 under the provisions of Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 and in the light of the same, the respondent had impliedly withdrawn the impugned

notice, which is the subject matter of challenge in this writ petition.

7. In the result, this Writ Petition is partly allowed and the impugned order/notice dated 28.02.2017 in Na.Ka.No.13919/2012/F1 issued by the first respondent is set aside and the respondents are at liberty to proceed further under the provisions of The Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 and pass orders as expeditiously as possible and not later than eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

jvm
To

1.The Commissioner,
Mayiladuthurai Municipal Corporation,
Mayiladuthurai.

2.The Assistant Director of Town
and Country Planning,
No.33, 4th Rajappa Nagar,
1st Street, Medical College Road,
Thanjavur-613 007

+ 1 cc to MR. K.M. Vijayan Associates Sr.88489
+ 1 cc to Mr. P. Srinivas, Advocate SR.88666
+ 1 cc to Government Pleader SR.89033

W.P.No.5936 of 2017

(CS-DR)
EU(04/01/2018)

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