

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.21619 of 2017
and W.M.P.No.22635 of 2017

C.Palaniyappan

... Petitioner

.Vs.

1.The Villupuram Municipality,
Rep. by the Commissioner,
Villupuram,
Villupuram District.

2.V.Arumugam

...Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ a Certiorari to call for the records of the first respondent in connection with its order in Na. Ka. No.Oou 1/13520/2017 dated 02.08.2017 and quash the same.

For Petitioner	: Mr.R.Srinivas
For R1	: Mr.P.Srinivas
For R2	: Mr.R.Sankarasubbu

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

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

2. The petitioner in the affidavit filed in support of this writ petition would aver among other things that he is an Under Graduate in Chemistry and Law and however, according to the learned counsel appearing for the petitioner, he is an Under Graduate in Chemistry and worked as law clerk for very many years. The petitioner would further stated that he was elected the President of Local Body in Vazhudhareddy Colony, Villupuram Town and District and his wife is also an advocate.

3. The petitioner stated that he is having many enemies for the reason that the close members of the family foisted a false case against him and he is facing constant treat to his life. The petitioner would further aver that the 2nd respondent who is a busy body, is said to have given a complaint/ representation to the 1st respondent alleging that the petitioner is an encroacher of the land in Survey No.175 in Vazhudhareddy Colony, Villupuram Town and District and in this regard, the 2nd respondent again

gave a complaint to the Legal Aid Committee on 19.06.2013. It is the claim of the petitioner that the lands admeasuring to an extent of 0.3 cents in S.No.175 and admeasuring to an extent of 0.75 cents in S.No.176 of Vazhudhareddy Village was originally in occupation of one Mr.Veerapan Son of Kariyan of Vazhudhareddy village around 70 years ago and he was an ex-service man and he was in enjoyment of the property and thereafter, his son Chokkalingam was in possession and enjoyment of the same and made cultivation in the said lands for more than 50 years and the said Chokkalingam transferred his rights of the above said land and property in favour of the petitioner's cousin brother Krishnamoorthy and he in turn, executed an unregistered document transferring his possession and right of the above said land to the petitioner and the said land/property is also subjected to statutory levies.

4. Mr.R.Srinivas, learned counsel for the petitioner has drawn the attention of this Court to the typed sets of papers and would submit that the 1st respondent on an earlier occasion issued notice dated 01.10.2013 under Section 216 (1) (2), 339 (2), 340(1) and 344 of the Tamil Nadu District Municipalities Act, 1920 informing the petitioner that without any permission has put up a superstructure admeasuring to an extent of 6.10m

x 6.70m for which the petitioner has also submitted his response and despite the same, no action was taken.

5. The learned counsel appearing for the petitioner would submit that the 2nd respondent filed CrI.O.P.No.15470 of 2015, against the officials as well as against this petitioner, directing the respondents to invoke the jurisdiction under Section 133 of Cr.P.C and remove the obstruction on the land in Survey No.175 of Valuthadreddy Colony, Villupuram Town, Villupuram District and it was dismissed on 07.06.2017 and that the 1st respondent namely the District Collector, Villupuram is directed to cause necessary inspection through the Tahsildhar and the 3rd respondent, therein after due intimation to the petitioner as well as the concerned parties and upon perusal of the inspection report to be submitted by the 3rd respondent, the 1st respondent was also directed to take further action and despite such a direction, no joint inspection was done and to the shock and surprise of the petitioner, the impugned notice dated 02.08.2017, has been issued by the 1st respondent and prays for interference.

6. Mr.P.Srinivas, learned counsel appearing for the 1st respondent would submit that even as per the averments made in the affidavit filed in support of the writ petition, the petitioner claims to be in possession of the land in question through unregistered document and the same cannot be looked into for many purpose and being a rank encroacher and without planning permission, started putting up the superstructure and hence, 1st respondent is constrained to take action in accordance with law.

7. This Court has considered the rival submission and also perused the materials placed before it.

8. It is relevant to extract section 182 (2) of the Tamil Nadu District Municipalities Act 1920 which says that " if the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto, or that it was erected or made with the permission or license of any Municipal Authority duly empowered in this regard....." and in the light of the said provision, this Court is of the view that an opportunity is to be provided to the petitioner to submit his representation along with relevant and authenticated documents to

substantiate the proof of his ownership and possession with a direction directing the 1st respondent to pass orders in accordance with law.

9. Accordingly, the impugned notice dated 02.08.2017 issued by the 1st respondent shall be treated as a show cause notice, for which the petitioner is at liberty to submit his representation by enclosing relevant and authenticated documents, within a period of four weeks from the date of receipt of copy of this order and upon receipt of the same, the 1st respondent is directed to consider and dispose of the same in accordance with law within a period of eight weeks thereafter and the 1st respondent, after putting the 2nd respondent on notice, shall consider and dispose of the representation / reply to be submitted by the petitioner on merits in accordance with law and pass further order within a further period of eight weeks thereafter and communicate the decision taken to the petitioner as well as to the 2nd respondent and till such time, the 1st respondent shall defer further proceedings in terms of the impugned notice dated 02.08.2017 and it is also made clear till the disposal of the representation by the 1st respondent, the petitioner shall not alter the physical features of the land / superstructure in question and also shall not create any third party right over the same.

10. The writ petition stands disposed of accordingly with the above direction. No costs. Consequently, the connected Miscellaneous petition is also closed.

dm/rka

Index: No
Internet: Yes

To

The Commissioner,
Villupuram Municipality,
Villupuram,
Villupuram District.

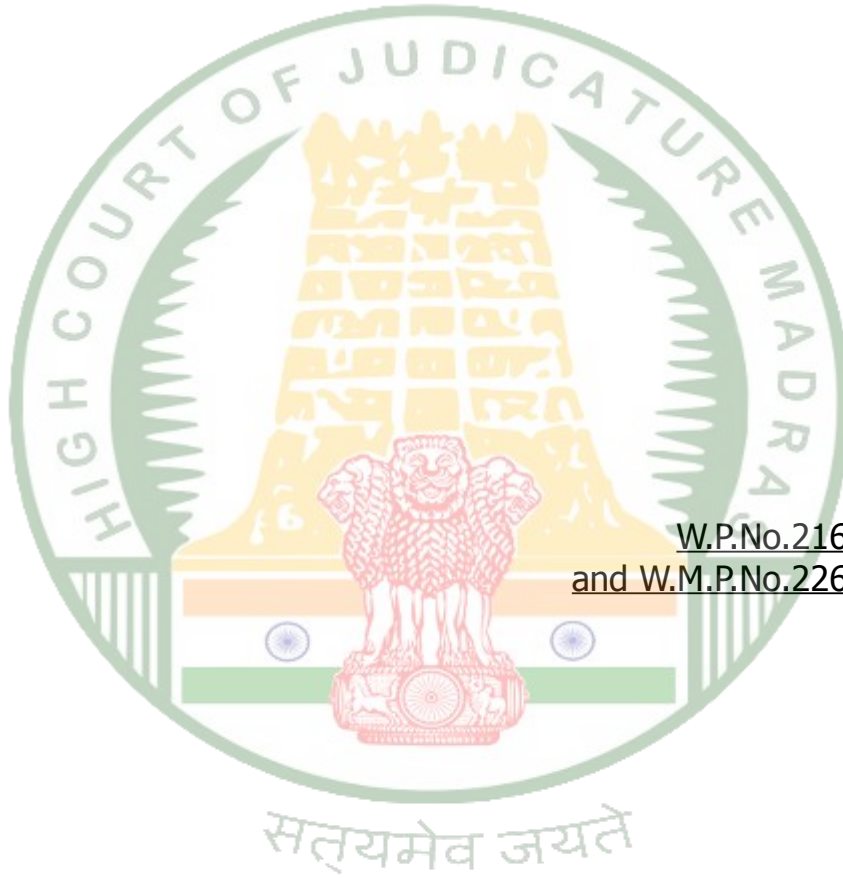
(M.S.N.,J) (N.S.S.,J)
27.10.2017



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M.SATHYANARAYANAN, J.,
AND
N.SESHASAYEE, J.,

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