



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

W.P. (MD)No.21945 of 2017

and

W.M.P (MD)No.18241 of 2017

Rajavelu

: Petitioner

.vs.

1. The Commissioner,
Tiruchirappalli City Municipal Corporation,
Bharathidasan Salai,
Tiruchirappalli,
Tiruchirappalli District.

2. The Assistant Commissioner,
Ariyamangalam Zone,
Tiruchirappalli City Municipal Corporation,
Bharathidasan Salai,
Tiruchirappalli,
Tiruchirappalli District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorari calling for the records pertaining to the proceedings in No.F1/10429/2017(Ariya), dated 20.11.2017, on the file of the Second Respondent herein and to quash the same as illegal.

For Petitioner : Mr.A.Thriuvadikumar
For Respondents : Mr.N.S.Karthikeyan
Standing Counsel

O R D E R

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

This Writ Petition has been filed seeking issuance of a Writ of Certiorari calling for the records pertaining to the proceedings in No.F1/10429/2017(Ariya), dated 20.11.2017, on the file of the Second Respondent herein and to quash the same as illegal.

3. By consent, the main Writ Petition itself is taken up for final disposal.

4. The Petitioner comes out with a stand that his father Periyasamy was originally running a iron scrap business at Ibrahim Park, where-after the Iron Scrap Merchants which includes his father, formed an Association and had approached the First Respondent/Tiruchirappalli Municipality in the year 1998 and sought for adjacent place, since they were evicted from the locality. It appears that pursuant to the resolution passed by the First Respondent/Municipality on 29.11.1988, the Iron Scrap Merchants were provided with an alternative accommodation at Vellamandi Street (Kallukara Street), Mailam Chandhai, Gandhi Market (near MGR Statue), Tiruchirappalli.

5. Moreover, when the First Respondent/Municipality had interfered with the possession of the shops, a suit in O.S.No.273 of 1989, on the file of the Learned District Munsif Court, Tiruchirappalli was filed and in I.A.No.173 of 1989, wherein, an order of interim injunction was granted. As a matter of fact, the Petitioner's father, in the mean time, had applied for Electricity Connection and also secured Electricity Connection by approaching the Court of Law.

6. At this stage, the Learned Counsel for the Petitioner points out that the Petitioner was all along assisting his father in the business and in fact, Electricity Connection, Telephone Connection were secured for the premises and in fact, property tax was also paid as on demand.

7. The Petitioner's father died on illness recently and when that be the facts situation, the Second Respondent /The Assistant Commissioner, Ariyamangalam Zone, Tiruchirappalli City Municipal Corporation, Bharathidasan Salai, Tiruchirappalli, Tiruchirappalli District had served the impugned notice, dated 20.11.2017 directing the Petitioner to remove the encroachment within a period of 12 days, failing which, the encroachment will be removed by the Corporation saddled with the expenses for removal.

8. The Learned Counsel for the Petitioner contends that the impugned notice/order, dated 20.11.2017 passed by the Second Respondent is illegal and arbitrary one because of the reason that there has been negation of Principles of Natural Justice. Indeed, the Petitioner was not provided with an opportunity to submit his explanation for the impugned notice, dated 20.11.2017 and as such, it is the plea of the petitioner that Section 258(2) of the Coimbatore City Municipal Corporation Act, 1981 which applies to the First Respondent/The Commissioner, Tiruchirappalli City Municipal Corporation, Bharathidasan Salai, Tiruchirappalli, Tiruchirappalli District provides for an opportunity to the owner or occupier of the premises to make his objections in regard to the purported encroachment.

<https://hcservices.coimbatore.in/Services> The Learned Counsel for the Petitioner emphatically submits that when the power is vested with the authority under the particular 'Act' or Statute, then such power is to be exercised



by the said authority in accordance with the procedure prescribed the reunder and in the departure from the prescribed procedure is impermissible one, in the eye of Law.

10. At this stage, this Court perused the impugned notice, dated 6.11.2017 of the Second Respondent/The Assistant Commissioner, Ariyamangalam Zone, Tiruchirappalli City Municipal Corporation, Bharathidasan Salai, Tiruchirappalli, Tiruchirappalli District addressed to the Petitioner, wherein, it was mentioned that the Petitioner had encroached an extent of 19 ft x 10ft by putting up a temporary Tinned Shed near MGR Statue at Kallukara Street in T.S.No.1, Block-12, Ward-N presently called as Vellamandi Road and further from the date of receipt of notice, within 12 days, on his own responsibility, the encroachment will have to be removed and information will have to be furnished to the Office, failing which, the Second Respondent/Municipality would remove the same and recover the cost from him, since the encroachment was a hindrance to the Pedestrians and for traffic.

11. It is to be pertinently pointed out by this Court that the impugned notice, dated 20.11.2017 of the Second Respondent was issued straight-away by the second Respondent to the petitioner without providing an opportunity to the petitioner to submit his remarks/objections/response to the impugned notice, dated 20.11.2017 and in this connection, this Court pertinently points out that the Principles of Natural Justice are not 'edicts of a Statute in its abstract sense' by providing an opportunity to the Petitioner to put-forth his views will amount to a fair hearing. After receipt of reply/objections from the purported encroacher or from the concerned person, it is incumbent on the concerned authority to look into the said objections both in substance and in form and to consider the same by adhering to the points raised and to pass necessary orders in the manner known to Law and in accordance with Law. However, by a mere running of the eye on the impugned notice, dated 20.11.2017 passed by the second Respondent, latently and patently, the Second Respondent had not adverted to the Principles of Natural Justice of providing an opportunity of fair hearing to the Petitioner namely, in receiving his objections.

12. Per contra, the impugned order, dated 20.11.2017 was passed by the Second Respondent straight-away which in the considered opinion of this Court is *per se* an illegal one in the eye of Law

13. Viewed in that perspective, this Court interferes with the impugned order in No.F1/10429/2017(Ariya), dated 20.11.2017, and sets aside the same. Consequently, the Writ Petition succeeds.

<https://hcservices.ecourts.gov.in/hcservices/>

14. In fine, the Writ Petition is allowed. The impugned Order dated 20.11.2017 passed by the Second Respondent is hereby set



aside by this Court for the reasons assigned in this Writ Petition. Further, the Second Respondent is directed to issue fresh show -cause notice to the petitioner in regard to the purported encroachment of 19ft x 10ft in respect of the tin shed which was put up near MGR Statue at Kallukara Street in T.S.No.1, Block-12, Ward-N presently called as Vellamandi Road within a period of two weeks from the date of receipt of a copy of this order. Soon after the receipt of a show-cause notice issued by the Second Respondent, then the Petitioner is directed to give a reply to the Second respondent within a period of two weeks thereafter. Thereupon, the Second Respondent is directed to look into the representation/reply of the petitioner within a period of ten days and later to pass a reasoned speaking order on merits, of course, after providing necessary opportunity to the petitioner and others concerned, if any, by following the Principles of Natural Justice. It is open to the Petitioner to produce necessary and relevant documents in support of his claim in respect of the property in issue and also to raise all factual and legal pleas and to seek appropriate remedy before the Second Respondent in accordance with Law. It is needless for this Court to make a mention that the Second Respondent is to pass the final orders in a just, fair, unbiased, impartial order and that too, in dispassionate manner within a period of two weeks thereafter, without being influenced and untrammelled by any of the observations made by this Court in this Writ Petition.

15. With the above said observation(s) and direction(s), the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

+ 1 cc TO Mr.N.S.Karthikeyan , Advocate in SR No. 90117
 + 1 cc TO Mr.A.Thriuvadikumar , Advocate in SR No. 90202

vsn

AE/KP/SAR1/08.12.2017/4P/3C

ORDER MADE IN
W.P. (MD) No.21945 of 2017
and
W.M.P (MD) No.18241 of 2017
29.11.2017