



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2017

CORAM:

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**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MRS.JUSTICE R.THARANI**

W.P.(MD)No.23258 of 2017 and
W.M.P (MD)No.19561 of 2017

A.Arockiyadoss

: Petitioner

. vs .

1. The Assistant Commissioner,
Municipal Corporation,
Trichy.

2. R.Easter Raj

: Respondents

[Second Respondent is deleted from
the cause-list vide order dated 20.12.2017)

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 of the 1st Respondent ie., the impugned notice in Na.Ka.No.F1/6728/2017/ அபி dated 07.11.2017 to quash the same as illegal.

For Petitioners : Mr.P.Ganapathi Subramanian
For R-1 : Mr.N.S.Karthikeyan
Standing Counsel

O R D E R

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

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in calling for the records of the First Respondent viz., the impugned notice in Na.Ka.No.F1/6728/2017/அபி dated 07.11.2017 and to quash the same as illegal.

2.Heard the Learned Counsel for the Petitioner and the Learned Standing Counsel for the First Respondent.

3. In respect of Second Respondent, an endorsement was made in the Writ Petition papers to the effect that the Second Respondent may be deleted from the cause-list.

4. Recording the aforesaid fact and the endorsement so made, the Second Respondent is ordered to be deleted from the cause-list.



5. According to the Petitioner, the property comprised in S.F.No.439 of 2015, UDR Survey No.236/2C was classified as 'Natham' and his father was in possession and enjoyment of the same. In the year 1972, patta was issued in favour of his father and earlier to that, his father was in exclusive possession and enjoyment of the property in question and he had put up a 'Tiled House' in it some 60 years back. As a matter of fact, the Petitioner's family is residing in the present house and the compound wall situated in their house is sixty years old.

6. The stand of the Petitioner is that his father Arockiyasamy had executed a settlement deed in his favour on 25.01.2008 and accordingly, settled the house in Natham Survey Field No.439/2015 in his favour. He is regularly paying Tax for the house in question.

7. The grievance of the Petitioner is that the First Respondent/Assistant Commissioner, Trichirappallai City Municipal Corporation, failed to issue notice to him before measuring the property and the impugned notice dated 07.11.2017 was issued to him, whereby and whereunder he was required to demolish a portion of the house put up in the street. In this connection, it is the plea of the Petitioner that his house is situated in Ward No.28. But, in the impugned notice, it was wrongly mentioned as Ward No.7 and it shows 'Non-Application of Mind' by the First Respondent.

8. At this stage, the Learned Counsel for the Petitioner contends that the First Respondent/Municipal Corporation, Trichirappalli, had placed reliance upon the Report submitted by the Town Sub-Inspector of Survey and issued the impugned notice dated 07.11.2017. The vehement plea taken on behalf of the Petitioner is that the First Respondent should have provided the copy of the Report of the Town Sub-Inspector of Survey and he should have been required to submit his explanation in the subject matter in issue. Since he was not provided an opportunity, there has been a negation of principles of natural justice.

9. The Learned Counsel for the Petitioner projects an legal argument that the First Respondent/Municipal Corporation, Trichirappalli, had issued the impugned notice against Law and as per Section 258 of the Trichirappalli City Municipal Corporation Act, 1994, only the Commissioner of Trichirappalli Municipal Corporation, is the competent authority to issue the impugned notice dated 07.11.2017.

10. In short, it is the crystalline stand of the Petitioner that the First Respondent viz., the Assistant Commissioner, Ariyamangalam Division, Trichirappalli Municipal Corporation, had exceeded his jurisdiction and in Law, he has no right to issue the impugned notice dated 07.11.2017.



11. The Learned Counsel for the Petitioner submits that the First Respondent had failed to appreciate an important fact that the Petitioner is in possession and enjoyment of 'Natham Property' and that the First Respondent is not at all competent to issue the impugned notice dated 07.11.2017.

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12. Per contra, it is the submission of the Learned Standing Counsel for the First Respondent that the Assistant Commissioner, Ariyamangalam Division, Trichirappalli City Municipal Corporation, who issued the impugned notice dated 07.11.2017 to the Petitioner has the competency in Law to issue the impugned notice and the same is free from any flaw.

13. The Learned Standing Counsel for the First Respondent expatiating his submission contends that on 01.09.2017, this Court in M.P(MD)No.1 of 2015 in W.P(MD)No.10348 of 2015 had passed the following order:

"This Court directs the third respondent to take action in the matter in accordance with law after issuing notice to the fifth respondent. If the construction is put up in public road, the same cannot be allowed and shall be removed. However, statutory procedure has to be followed before causing its removal. The entire exercise shall be completed within three months from the date of receipt of a copy of this order."

and also that, the Town Sub-Inspector of Survey had measured the property in question and affirmed the encroachment. In this regard, the Learned Standing Counsel for the First Respondent clarifies that G.T.Naidu Road lies in Ward No.7 and the house lies in Ward No.28. Furthermore, the Petitioner had encroached an extent of 0.06m X 0.14m in G.T.Naidu Road belonging to the First Respondent City Municipal Corporation. As such, there is nothing wrong in regard to the issuance of the impugned notice dated 07.11.2017.

14. Continuing further, on behalf of the First Respondent, it is brought to the notice of this Court that the Petitioner had not submitted any explanation to the impugned notice dated 07.11.2017. At this stage, the Learned Standing Counsel for the First Respondent points out that if the Petitioner submits his Representation/Explanation/Objections to the First Respondent, the same will be considered by the First Respondent within a period to be determined by this Court.

15. Considering the fact that the Petitioner for the impugned notice dated 07.11.2017 issued by the First Respondent/Trichirappalli Municipal Corporation had not submitted his reply to the First Respondent, this Court, at this stage, without going into the merits of the matter and also taking note of the order passed in M.P(MD)No.1 of 2015 in W.P(MD)No.10348 of 2015 dated 01.09.2017, directs the Petitioner to submit his explanation to the impugned notice dated 07.11.2017 within a period of two weeks from the date



of receipt of a copy of this order. Thereafter, the First Respondent after receipt of the explanation/objections of the Petitioner is to look into the same with all seriousness and earnestness and if he finds any substance in it, he is directed to pass necessary orders in the subject matter in issue by applying his judicial thinking mind by assigning qualitative and quantitative reasons, of course, after providing opportunity to the Petitioner and others by following the principles of natural justice, within a period of four weeks thereafter.

16. It is open to the Petitioner to raise all factual and legal pleas(including the aspect of competency of the Assistant Commissioner of Ariyamangalam Division, Trichirappalli City Municipal Corporation), to issue the impugned notice dated 07.11.2017 and if the Petitioner requires personal hearing, then, the First Respondent shall also provide the same to the Petitioner. If the Petitioner desires to produce relevant documentary evidence and if he is interested to adduce oral evidence, then, the same may be permitted by the First Respondent.

17. It is needless for this court to make a significant mention that the First Respondent/Assistant Commissioner, Trichirappalli, shall pass appropriate orders in the subject matter in issue in a Free, Just, Fair, Impartial, Unbiased and in a dispassionate manner within the time determined by this Court.

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

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Assistant Commissioner,
Municipal Corporation,
Trichy.

+ 1 CC TO Mr.N.S.KARTHIKEYAN, ADVOCATE IN SR No. 93858
+ 1 CC TO Mr.P.GANAPATHI SUBRAMANIAN, ADVOCATE IN SR No. 94725

PM

TE/MR/SAR-1 : 08/01/2018 : 4P/4C