

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.2935 of2018
WMP.NO.3596 OF 2018

P.Balu

... Petitioner

vs.

The Commissioner,
Dharmapuri Municipality,
Dharmapuri.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus calling for the records pertaining to the Notice dated 02.01.2018 under Reference No.Aa.A.No.001/2017/F1 issued by the Respondent and quash the same and consequently direct the Respondent to issue licence to the Petitioner to use the Iron Corridor measuring an extent of 23.18 sq. mt. above the conservancy lane in between Chinnasamy Naidu Street and Chittha Varappachetty Street, Dharmapuri.

For Petitioner : Mr.A.E.Ravi Chandran

For Respondent : Mr.J.Ramesh,
Addl. Government Pleader

O R D E R

(Order of the Court was made by S.VAIDYANATHAN,J.)

Seeking to quash the Notice dated 02.01.2018 issued by the Respondent and for a consequential direction to the Respondent to issue licence to him to use the Iron Corridor measuring an extent of 23.18 sq. mt. above the conservancy lane in between Chinnasamy Naidu Street and Chitha Veerappa Chetty Street, Dharmapuri, the Petitioner is before this Court with the present Writ Petition.

2. Heard the learned counsel for the Petitioner as also the learned Additional Government Pleader appearing for the Respondent/Municipality. This matter is taken up for disposal at the stage of admission itself.

3. According to the Petitioner, he is the Proprietor of Sri Krishna Silks, having showroom at Door No.20-A, Chinnasamy Naidu Street, Dharmapuri, for the past 17 years. Right behind the said showroom, the Petitioner took another property at Door No.11, Chitha Veerappa Chetty Street, Dharmapuri, for lease, to expand his business. In between the two properties at Chinnasamy Naidu Street and Chitha Veerappa Chetty Street, there exists a conservancy lane measuring 4 ½ feet in width, belonging to the Respondent/Municipality. In the said Conservancy lane, drainage line of both the properties are running and the said lane is used to maintain/repair the lines and it is not used as a public thoroughfare.

4. The case of the Petitioner is that since the buildings on either side does not have an opening into the Conservancy lane, he put up an Iron Corridor measuring an extent of 23.18 sq. mt. at a height of 14 feet from

the Ground level, by connecting both the properties, without causing any hindrance or creating any kind of obstruction to the drainage lane. According to the Petitioner, he was not aware of the fact that he has to obtain permission from the Respondent/Municipality, for putting such a Corridor. While so, the respondent/Municipality issued Notice dated 11.11.2017 to the Petitioner under Sections 182, 313, 338, 339, 340 and 341 of the Tamil Nadu District Municipalities Act, 1920, treating the corridor put up by the Petitioner, connecting the two properties above the Conservancy Lane, as encroachment and thereby asking him to remove the Corridor within 24 hours, failing which, the same will be removed by the Respondent, at the cost of the Petitioner. Immediately, thereafter, the Petitioner gave a reply on 13.11.2017 stating that the Iron Corridor did not in any manner cause hindrance to the free flow of drainage or to the general public, and requested the Respondent not to take coercive steps to demolish the same.

5. Citing reference to Section 183(1) of the Tamil Nadu District Municipalities Act, 1920, the Petitioner has stated that necessary powers are vested with the Respondent to allow certain projections and erections over a Street, etc. for access to the premises by way of granting licence on conditions and in the instant case, the place where the Iron Corridor is put up is only a Conservancy lane, where there is no movement of public. Hence, the Petitioner made a detailed application dated 16.11.2017 to the Respondent/Municipality along with the location Plan and Sketch, seeking licence for using the Iron Corridor put up 14 feet over the Conservancy Lane, connecting two of his properties. However, the Respondent, rejected the Petitioner's application vide impugned proceedings, dated 02.01.2018, by referring a Government Letter bearing No.31730/LD4(1)/2017-1, Revenue Department, dated 28.08.2017,

stating that permission cannot be granted for use of the property belonging to the Government.

6. Learned counsel for the Petitioner submitted that the demolition of the Iron Corridor put up by the Petitioner is going to take place today and pleaded that this Court may pass appropriate orders, as no appellate remedy is available to the Petitioner. According to him, if there is encroachment on the road, the Respondent will have to issue Notice to the Petitioner, whereas, in the case on hand, the Petitioner has put up the Iron Corridor 14 feet about the conservancy lane, without causing any disturbance to the general public and also without any damage to the drainage lines. Hence, according to him, the provisions of the Tamil Nadu District Municipalities Act, 1920 may not be applicable to the facts of this case and even assuming that it is applicable in terms of Section 183 of the said Act, the Respondent/Municipality is bound to grant licence, as the Iron Corridor put up by the Petitioner will not cause inconvenience to anyone, much less the use of Lane, which is only for the purpose of drainage.

7. In support of his case, learned counsel for the Petitioner relied upon a Full Bench decision of this Court in the case of Ramaraju vs The State Of Tamil Nadu, reported in 2005 (2) CTC 741, wherein, it is held as under:

"38. It is of course true that in the two counter affidavits, the municipalities have taken the stand, quite expectedly and understandably, that they have no intention to take any step for removal of any encroachment from the road or road margins without following the due procedure of law and they do not have the intention to take steps for eviction of any person from any land not belonging to the municipalities. However, since the news item appearing in the News Papers gives the impression as if Rajapalayam Municipality intended to remove all encroachments pursuant to the order passed by the High Courts in W.P.No. 689 of 2005 and since certain misconceptions have arisen as if the Division Bench has given a blanket direction for removal of encroachment even without following due process of law, the matter is required to be clarified in the following manner :

(1) If the encroachment is on road or road margins, vested in Municipalities, the removal if any is to be effected only after following the

procedure contemplated in Chapter IX of the Tamil Nadu District Municipalities Act and more particularly the provisions contained in Section 182 and Section 183 (6). Before taking action under Section 182 of the District Municipalities Act, notice in writing giving at least two weeks time should be served and, if the person avoids to receive the notice, such notice can be effected by affixure. However, notice by any other means, such as through public announcement or beating of drums or by general notice in newspapers, may not be sufficient.

(2) The decision in W.P.No. 689 of 2005 cannot be construed as having abrogated the statutory power of the Council under Sections 182 and 183. The Council may grant licence to put up verandas, balconies, sunshades, weather-frames and the like. Similarly, the Council has power to lease road sides and street margins for occupation on such terms and conditions and for such period as the Council may fix. However, such power under Sections 183(1) and 183(3) should be exercised keeping in view the provisions contained in Section 183(4) and no such licence under Section 183(1) or lease under Section 183(3) should be granted if the projection, construction or occupation is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road as such. Any projection or construction put up under Section 183(1) or (2) can be removed on expiry of the licence or the lease, as the case may be. Compensation is required to be paid in matters coming within the scope of 182(2).

(3) Payment of property tax, provisions of water connection or electricity by themselves cannot be construed as conferring any independent right, if the encroachment is otherwise unauthorised.

(4) The above directions and observations are also applicable to encroachment in respect of road or road margins coming within the jurisdiction of Municipal Corporations or Town and Village Panchayats, in which event, necessary action can be taken by the concerned authorities by following the relevant provisions of law applicable to such Corporations or Panchayats.

(5) To the extent the National Highways Act, 1956 and the Control of National Highways (Land and Traffic) Act, 2002 are applicable, action can be taken only by following the procedure prescribed under such statutes. Similarly the provisions of the Tamil Nadu Highways Act, 2001, are applicable to the Roads coming under the State Act.

(6) If the encroachment is on the land belonging to the Local Authorities, but such land is not part of the road or road margin or roadside land, eviction can be effected by following the procedure contemplated in law, namely, either by taking recourse to the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 or any other law applicable or otherwise by taking recourse to Civil Courts and not by use of unilateral force.

(7) So far as the encroachment on the land belonging to the Government is concerned, action for eviction if any can be taken only by the appropriate authority and by following the procedure contemplated under the Tamil Nadu Land Encroachment Act, 1905.

(8) The directions issued in W.P.No. 689 of 2005 are applicable to removal of encroachments on roads and road margins and not other lands belonging to the Local Authorities or the State. The said decision should not be construed as giving a licence to the Local Authorities to cancel the existing license or lease or to remove the encroachments without following the procedure contemplated under the law.

(9) If any Civil Courts decree or interim order is holding the field, obviously, no action can be taken, unless and until such a decree or interim order is set aside or vacated in a manner known to law."

8. In reply, learned Additional Government Pleader appearing for the Respondent/Municipality submitted that the Drainage lane is connecting the two properties and the Petitioner has got ingress and egress to one property from Chinna Naidu Street and to the other property from Chitha Veerappa Chetty Street. According to him, the Petitioner has put up the Iron Corridor without permission from the Respondent/Municipality and certainly, it has to be removed.

9. A reading of the impugned notice dated 02.01.2018 makes it clear that the Petitioner has not taken appropriate permission from the authorities concerned before putting up the Iron Corridor in question. The contention of the Petitioner that the Corridor put up 14 feet over the Lane is no way going to disturb the general public or cause damage to the Drainage Lines, cannot be acceptable, as, the said act is in violation of law. Any person encroaching upon the public property by any means, is certainly a violator and he/she can by no means justify the same. Even accepting the petitioner's contention that the corridor will no way damage the Drainage lines, one aspect as to the durability of the Corridor has to be borne in mind. In this regard, necessary permission ought to have been obtained by the Petitioner from the authorities concerned. Payment of property tax, water tax, etc. cannot be considered as a conferring right, if the encroachment is otherwise unauthorized.

10. In the case on hand, admittedly, the Petitioner has not obtained any permission from the authorities concerned to put up the Iron Corridor. Hence, this Court is not inclined to grant the relief sought by the Petitioner. Further, learned counsel for the Petitioner pleaded that the Appeal to be preferred by the Petitioner may be directed to be considered.

11. This Court is of the view that the purpose of filing an Appeal is a futile exercise and that it will amount to continuing the litigation forever. Hence, we find no reason to interfere with the impugned order passed by the Respondent/Municipality.

Hence, this Writ Petition stands dismissed. No costs.
Consequently, connected W.M.P.No.3596 of 2018 is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

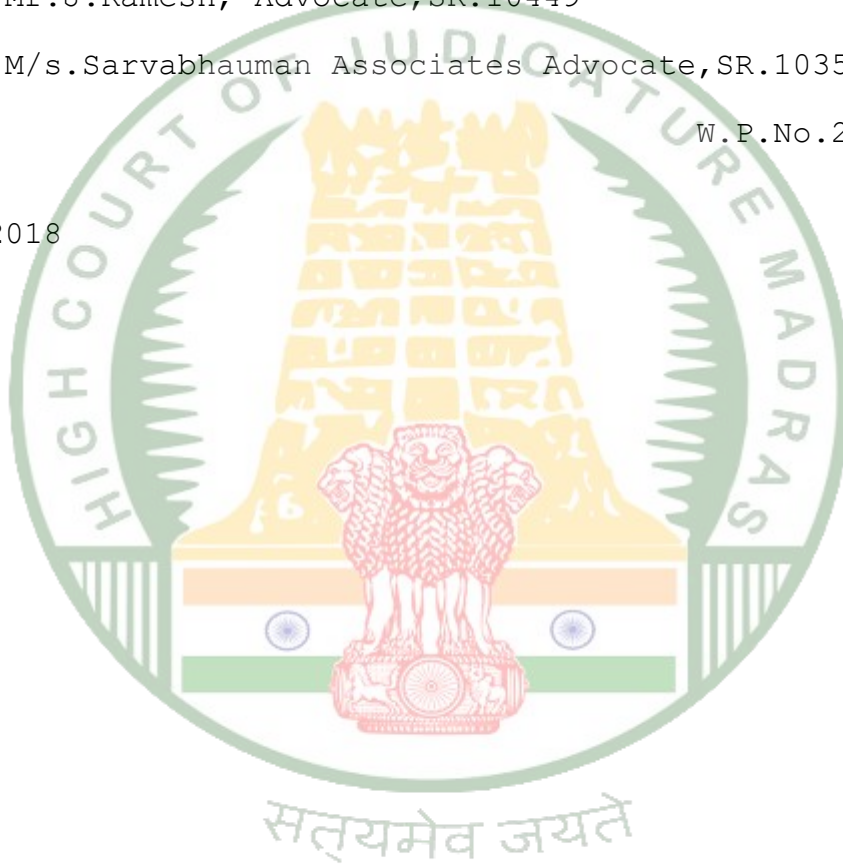
Sub Asst. Registrar

+ 1 cc to Mr.J.Ramesh, Advocate,SR.10449

+ 1 cc to M/s.Sarvabhauman Associates Advocate,SR.10350

W.P.No.2935 of 2018

vsn(co)
nr 05/03/2018



WEB COPY