

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P. 16354 of 2018
and
W.M.P. 19522 of 2018

L.Madheswaran

... Petitioner

Vs

The Commissioner,
Attur Municipality,
Attur-636 102.
Salem District.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, calling for the records of the respondent in Na.Ka.No.2065/2018/E1, dated 04.06.2018, quash the same.

For Petitioner :Mr.R.Karthikeyan

For Respondent :Mr.A.S.Thambusamy,
Standing Counsel

O R D E R

This writ petition has been filed challenging the imposing of penalty of Rs.1 lakh and also directing the petitioner to plant 100 saplings as the punishment for cut and removal of a neem tree belongs to respondent Municipality.

2. According to the petitioner, he is running a showroom at Door No.1109/419/1, Salem-Cuddalore Main Road, Attur Town and he is also the President of Rotary Club and also involved in planting tree saplings at various places at Attur town including schools, public roads etc.

3. Now, the petitioner has received the impugned notice dated 04.06.2018 alleging that the petitioner had cut and removed the neem tree, which was standing in front of his shop. Hence, the respondent has imposed the penalty of Rs.1 lakh and also directed the petitioner to plant 100 tree saplings in the municipal limits.

4. According to the petitioner, the above order has been issued without any enquiry and without any show cause notice. It is further stated that the said neem tree was 10 year old, which was standing in front of his shop, which has provided shade to the petitioner shop and he has no intention to remove the tree and it is also not an hindrance to the petitioner's shop. Based on some political influence, the respondent has issued the impugned notice without any enquiry whatsoever. Apart from that, the respondent has also no power or authority to impose any such penalty under the District Municipalities Act. In the said circumstances, the present Writ Petition has been filed.

5. I have heard the submissions made by Mr.R.Karthikeyan, learned counsel appearing for the petitioner as well as Mr.A.S.Thambusamy, learned standing counsel for the respondent.

6. Mr.R.Karthikeyan, learned counsel appearing for the respondent submitted that the petitioner himself is a President of a Rotary club and he is involved in planting of tree saplings in various places in Attur Town on behalf of Rotary club. He has never cut and removed the said neem tree standing in front of his shop. He has been falsely implicated without any enquiry whatsoever. Apart from that, the respondent has also no power to impose any such penalty under the District Municipalities Act.

7. On the other hand, Mr.A.S.Thambusamy, learned standing counsel appearing for the respondent Municipality submitted that based on the reliable information that the petitioner has cut and removed a neem tree standing in front of his shop, a police complaint was also lodged before the Attur police station, which is pending enquiry. Apart from that, since the petitioner has cut and removed the standing trees belongs to respondent Municipality, the fine has been imposed invoking power under the District Municipalities Act.

8. I have considered the rival submissions and perused the records carefully.

9. On perusal of the impugned order, it is found that the impugned order has been passed without any enquiry whatsoever. As rightly contended by the learned counsel appearing for the petitioner that the respondent, only on presumption, has passed the impugned order without any enquiry whatsoever. The impugned order does not disclose, on what basis, the authorities have come to a conclusion that the petitioner alone cut and removed the neem tree standing in front of his shop. That apart, the respondent also not in a position to trace their power under the District Municipalities Act for imposing such penalty on the petitioner.

10. In the said circumstances, I am of the considered view that the impugned order has been passed in total violation of principles of natural justice and also without any jurisdiction. Hence, the impugned order is liable to be set aside and accordingly, it is set aside. However, since a criminal complaint is pending with the Attur Police station, it is for the respondent to approach the police and get the complaint investigated as per law.

11. In view of the same, the present Writ Petition stands disposed of. No costs. Consequently, other Writ Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

rpp

To

The Commissioner,
Attur Municipality,
Attur-636 102.
Salem District.

+1cc to Mr. R.Karthikeyan, Advocate, S.R.No. 59639
+1cc to Mr.A.S.Thambuswamy, Advocate, S.R.No. 59669

W.P. 16354 of 2018
and
W.M.P.19522 of 2018

GN(18/09/2018)

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