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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

WP. (MD) No.4194 of 2018

and

W.M.P. (MD) Nos.4342 and 4343 of 2018

V.Veeranan

... Petitioner

-vs-

The Commissioner,
Madurai Corporation,
Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records relating to the proceedings of the respondent herein dated 22.01.2018 issued under Sections 236, 256, 257, 258, 472, 473 and 503 of the Madurai Municipal Corporation Act ad quash the same.

For Petitioner : Mr.A.R.L.Sundaresan, senior counsel
for M/s.A.L.Ganthimathi

For Respondent : Mr.R.Murali

O R D E R

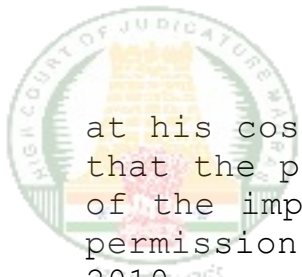
(Order of the Court was made by T.S.SIVAGNANAM, J.)

Heard Mr.A.R.L.Sundaresan, learned senior counsel appearing for the petitioner and Mr.R.Murali, learned standing counsel accepting notice for the respondent Corporation.

2.With the consent on either side, the writ petition itself is taken up for disposal.

3.The petitioner has challenged a notice issued by the respondent dated 22.01.2018, calling upon the petitioner to clear the encroachment over a water channel. The allegation is that a wall has been constructed and water channel has been blocked and there is a tennis Court.

4.The learned senior counsel submitted that the respondent Corporation by proceeding dated 05.07.2010 granted permission to the petitioner to use the water channel for parking of cars measuring an extent 150 x 10 with the monthly rent of Rs.600/-. The said order contained 7 conditions and one of the condition is that the petitioner to erect a bridge on top of the water channel



at his cost and use the same for parking of vehicles as it appears that the petitioner owns a hotel in the near vicinity. On reading of the impugned notice, we find that there is no reference to the permission, which was granted to the writ petitioner in the year 2010.

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5.The learned senior counsel submits that the license has been renewed periodically and as on date, the petitioner is paying a sum of Rs.794/- and a copy of the receipt has been produced in the typed set of papers, which shows that allotment would end on 31.03.2020. On receipt of the impugned notice, the petitioner has given an objection on 21.02.2018 mentioning the above mentioned facts.

6.From the photographs produced before us, we find that the water channel has been covered which according to the petitioner is in terms of the conditions of license and over the same, the cars are parked. However, prima facie, we find that there is no tennis Court in the photograph produced. If the allegation is that the petitioner has violated the conditions of license as mentioned in the proceeding dated 05.07.2010, then, appropriate action should have been initiated by the respondent Corporation for such violation.

7.In the light of the above mentioned factual position, the respondent should have issued show cause notice to the petitioner and before even issuing such a show cause notice, an inspection should have been conducted after notice to the petitioner, which would have brought to light the facts which is existing as on ground.

8.Thus, we are satisfied that there has been violation of principles of natural justice. However, since the petitioner has already placed his objection dated 21.02.2018, we direct the respondent to depute a senior officer, after notice to the petitioner to cause an inspection of the area and based on the inspection report, the respondent shall afford an opportunity of personal hearing to the petitioner/authorised representative and take a reasoned decision on merits and in accordance with law. Till such decision is taken by the respondent, status quo which is prevailing as on date shall continue.

9.With the above observation and direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(AS)

/True Copy/



To

The Commissioner,
Madurai Corporation,
Madurai.

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+1cc to M/s.A.L.Ganthimathi, Advocate Sr.No.52100

+1cc to Mr.R.Murali, Advocate Sr.No.52094

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