



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2018

CORAM:

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THE HONOURABLE MR. JUSTICE T.RAJA
and
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. (MD) Nos.4528 and 8218 of 2018
and

W.M.P. (MD) Nos.7776 and 7777 of 2018

W.P. (MD) No.4528 of 2018:

J.Jeyaraj

... Petitioner

Vs.

1. The Commissioner,
Madurai City Municipal Corporation,
Anna Maaligai,
Madurai.

2. The City Town Planning Officer,
Madurai City Municipal Corporation,
Anna Maaligai,
Madurai.

3. M.Karuppanan

... Respondents

PRAYER: The writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 1 and 2 herein to demolish the unauthorised section which was constructed by the third respondent in Survey No.116/2 in Ward No.8, Vaithiyanathapuram Village, Indira Nagar Main Road, by following due process of law within the time limit as fixed by this Court and to consider the petitioner's representation dated 30.01.2018.

For Petitioner

: M/s.Hema Karthikeyan

For Respondents

: Mr.T.S.Mohamed Mohideen

1 and 2

For Respondent 3

: Mr.S.Chandrasekaran

W.P. (MD) No.8218 of 2018:

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

M.Karuppanan

... Petitioner

**Vs.**

1. The Commissioner,
Madurai Corporation,
Anna Maaligai,
Madurai - 625 002.

2. The Assistant Commissioner,
Zone 1, Madurai Corporation,
Ellis Nagar, Madurai - 625 010.

3. The Executive Engineer (Planning),
Madurai Corporation,
Anna Maaligai,
Madurai - 625 002.

... Respondents

PRAYER: The writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records in connection with the impugned 'Show Cause Notice' of the first respondent in A1/02802/18, dated 08.03.2018 and to quash the same.

For Petitioner	: Mr.S.Chandrasekaran
For Respondent 1	: Mr.N.Shanmugaselvan

COMMON ORDER

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

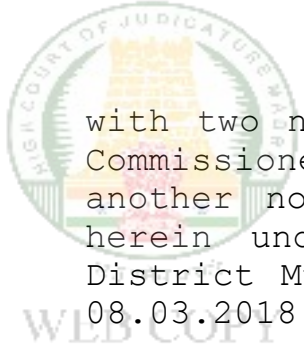
In view of the fact that the issue involved in both the Writ Petitions is one and the same, the Writ Petitions are taken up together and disposed of by a common order.

2.W.P.(MD)No.4528 of 2018 has been filed seeking Writ of Mandamus to direct the respondents 1 and 2 to demolish the unauthorised section which was constructed by the third respondent in Survey No.116/2 in Ward No.8, Vaithiyanathapuram Village, Indira Nagar Main Road, by following due process of law within the time limit as fixed by this Court and to consider the petitioner's representation dated 30.01.2018.

3.W.P.(MD)No.8218 of 2018 has been filed seeking Writ of Certiorari, to call for the records in connection with the impugned show cause notice of the first respondent in A1/02802/18, dated 08.03.2018 and to quash the same.

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

4.The petitioner in W.P.(MD)No.8218 of 2018 has been issued



with two notices. The notice dated 08.01.2018 was issued by the Commissioner, Madurai Corporation, first respondent herein and another notice dated 08.03.2018 issued by the second respondent herein under Sections 282 and 296(1) and (2) of the Madurai District Municipalities Act, 1971. Challenging the notice dated 08.03.2018 only Writ Petition (MD) No.8218 of 2018 has been filed.

5.The learned Counsel appearing for the petitioner would submit that as alleged by the respondent, there is no encroachment found in the petitioner's place since the petitioner is an absolute owner of the building bearing Door No.116/2 in Ward No.8 coming under the Corporation Zone-I. He has constructed a building to an extent of 1936 sq. ft. with 32 ft. on the northern and southern side and 66 ft. on the eastern and western side duly approved by the Commissioner, Madurai Corporation, under approved building Plan No.334/12, dated 15.03.2012. In view of the commencement of summer season, the petitioner has constructed a compound wall around his building by putting up galvanised tin sheets in vacant area in order to prevent heat radiation as requested by his tenants and the said work has also been completed in the middle of January, 2018. In the meanwhile, since the petitioner has purchased the land in question from one Mr.Patturajan, who is an Advocate and Ex. Mayor of Madurai Corporation, by a sale deed dated 15.05.2009, in respect of a dispute arising from common pathway between the petitioner and the said Jayaraj, who is the relative of the said Pattu Rajan, a complaint has been given on the basis of the instigation made by Mr.Patturajan, the first respondent issued notice dated 08.01.2018 alleging that the petitioner has put up a construction to an extent of 62 ft. x 42 ft. equivalent to 2520 sq. ft. without obtaining any planning permission and the first respondent has also afforded only three days time to give explanation. The petitioner, however, submitted a detailed explanation. In the meanwhile, the second respondent also issued another notice dated 08.03.2018 and on receipt of the same, another explanation also has been given and till date no order was passed and these two explanations have not been considered. Apprehending some coercive steps against the petitioner, the petitioner is before this Court.

6.It is further submitted that when the petitioner has given detailed representations dated 19.03.2018 and 02.04.2018, the third respondent, who is an Executive Engineer (Planning), working in the first respondent office has affixed the notice dated 12.03.2018 on the front door and rear door of the petitioner premises on 27.03.2018 and sealed the premises also.

7.Taking support from the Full Bench judgment of this Court
<https://hcs.eis.eodis.gov.in/hcs/2005> **2005 (2) CTC 741 (Ramaraju v. The State of Tamil Nadu, Rep. by its Secretary to Government, Revenue Department, Fort. St.**



George, Chennai and others), the learned Counsel appearing for the petitioner submitted that this Court while considering the provisions contained in Section 182, 183 (6) of the Tamil Nadu District Municipalities Act, 1920, held that the municipalities before taking action under Section 182 should issue notice in writing giving at least two weeks time to the encroachers for removal of the same. In the present case, admittedly when the notice was issued on 08.03.2018 before completion of two weeks time as mandated by the judgment of the Hon'ble Full Bench reported in 2005 (2) CTC 741 (Cited supra), the respondents have sealed the petitioner's premises which is against the provisions under Sections 182 and 183 and also the ratio laid down by the Hon'ble Division Bench of this Court in the aforementioned case.

8. Mr. T. S. Mohamed Mohideen, learned Counsel appearing for the respondent also takes a note of the ratio laid down by this Court although attempted to support the impugned order is unable to do so, the reason being, in the present case, the petitioner, who was issued with the notice under Sections 282 and 296 (1) & (2) of the Tamil Nadu District Municipalities Act, 1920 calling upon the petitioner to remove/demolish the unauthorised construction within seven days from the date of receipt of the said notice, is also entitled to move an application under Section 49 of the Tamil Nadu Town and Country Planning Act, 1971 and such application shall be considered by the Member Secretary, Local Planning Authority. Section 49 of the Tamil Nadu Town and Country Planning Act, 1971 is extracted as under:

49. Application for permission. - (1) Except as otherwise provided by rules made in this behalf, any person not being any State Government or the Central Government or any local authority intending to carry out any development on any land or building on or after the date of the publication of the resolution under sub-Section (2) of Section 19 or the notice in the Tamil Nadu Government Gazette under Section 26 shall make an application in writing to the appropriate planning authority for permission in such form and containing such particulars and accompanied by such documents as may be prescribed.

(2) The appropriate planning authority, shall, in deciding whether to grant or refuse such permission, have regard to the following matters, namely:-

(a) the purpose for which the permission is required;

(b) the suitability of the place for such purpose;

(c) the future development and maintenance of the planning area.

(3) When the appropriate planning authority refuses permission to any person, it shall record in writing the reasons for such refusal and furnish to that person on demand a brief statement of the same.



9. We are unable to appreciate the stand taken by the respondent. The petitioner, having purchased the land in question from Mr. M. Patturajan, who is an Advocate and Ex-Mayor of the Madurai Corporation, under registered sale dated 15.05.2009, is using a common pathway running between the house of the petitioner and the house of one Mr. J. Jayaraj who is residing on the northern side of the petitioner's house. The said Mr. J. Jayaraj, at the instigation of Mr. M. Patturajan, made a false complaint to the first respondent who issued a notice dated 08.03.2018 alleging that the petitioner has put up a brick construction to an extent of 62' x 42' = 2520 sq. ft. without obtaining any planning permission. In the said notice, only three days time is given for submitting explanation. Mr. J. Jayaraj also filed a Writ Petition (MD) No. 4528 of 2018 on 13.02.2018 directing the respondents 1 and 2 to demolish the alleged unauthorised construction and the same is also pending disposal. The initiation of the said Writ Petition is clear indication to prove the ulterior intention of Mr. J. Jayaraj, who is a relative of Ex-Mayor Mr. M. Patturajan. Thereafter, the second notice was issued to the petitioner on 12.03.2018 levelling allegation that the petitioner has constructed 60 ft. x 42 ft. without any approved plan. The petitioner submitted a detailed letter to the second respondent on 19.03.2018 meeting all the allegations but the same was refused to be received. While so, the respondents have wrongly come and sealed the building in question without any jurisdiction. The notice dated 08.03.2018 was issued to the petitioner levelling various allegations to submit explanation within three days, the notice is contrary to the ratio laid down by the Hon'ble Full Bench of this Court reported in **2005 (2) CTC 741 (Ramaraju v. The State of Tamil Nadu, Rep. by its Secretary to Government, Revenue Department, Fort. St. George, Chennai and others)** wherein it is held that before taking action under Section 182 of the Tamil Nadu District Municipalities Act, 1920, 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. A reading of the notice dated 08.03.2018 calling upon the petitioner to remove/demolish the construction is badly motivated in the light of the ratio laid down by the Full Bench cited above. It is, therefore, appropriate to extract the relevant portion of the ratio which reads as under:

"(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 affixture. 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.

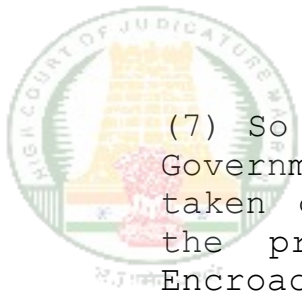
(2) The decision in W.P.No. 689 of 2005 cannot be construed as having abrogated the statutory power of the Council under Sections 182 and 183. The Council may grant licence to put up verandas, balconies, sunshades, weather-frames and the like. Similarly, the Council has power to lease road sides and 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.

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(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."

10. In the light of the above, the impugned notice dated 08.03.2018 is liable to be set aside and accordingly, the same is set aside. The respondents are directed to remove the seal within a period of three days from today. Secondly, the petitioner has also got a right to move an application under Section 49 of the Tamil Nadu Town and Country Planning Act, 1971. Therefore, the petitioner is given a week's time to submit an application from the date of receipt of a copy of this order and if such application is filed under Section 49 of the Act, the Member Secretary, Local Planning Authority, is hereby directed to consider the same and pass appropriate order on merits and in accordance with law, within a period of four weeks thereafter.

11. With the above direction W.P.(MD)No.8218 of 2018 is disposed of. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

12. In view of the order passed in W.P.(MD)No.8218 of 2018, no order is required in W.P.(MD)No.4528 of 2018 and the same is dismissed. No costs.

Sd/-

Assistant Registrar (P&A)

/True Copy/



To

1. The Commissioner,
Madurai City Municipal Corporation,
Anna Maaligai,
Madurai.

2. The City Town Planning Officer,
Madurai City Municipal Corporation,
Anna Maaligai,
Madurai.

3. The Assistant Commissioner,
Zone 1, Madurai Corporation,
Ellis Nagar, Madurai - 625 010.

4. The Executive Engineer (Planning),
Madurai Corporation,
Anna Maaligai,
Madurai - 625 002.

5. The Member Secretary,
Local Planning Authority,
Madurai.

+ 1 CC TO Mr.K.HEMA KARTHIKEYAN, ADVOCATE IN SR No. 82978
+ 1 CC TO Mr.T.S.MOHAMED MOHIDEEN, ADVOCATE IN SR No. 83126
+ 2 CC TO Mr.S.CHANDRASEKAR, ADVOCATE IN SR Nos. 83389 & 83388

SRM

TE/PM/SAR-1 : 30/10/2018 : 8P/10C

W.P.(MD) Nos.4528 and 8218 of 2018 and
W.M.P.(MD)Nos.7776 and 7777 of 2018
07.09.2018