



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 06.03.2018

CORAM

WEB COPY

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE R.THARANI**

W.P. (MD) .No.4667 of 2018
and
W.M.P. (MD) .No.4735 of 2018

A.Palpandi

... Petitioner

Vs.

1. The District Collector,
Collectorate Buildings,
Madurai District,
Madurai.

2. The Commissioner,
Madurai Corporation,
Anna Maligai,
Madurai-625 002.

3. The Assistant Town Planning Officer,
Zone-1.
Madurai Corporation,
Travelers Bungalow,
Mahaboobpalayam,
Madurai.

4. L.S.S.Sankaralingam

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent Nos.1 to 3 to forbear the unauthorized construction made by the respondent No.4 in Government Poromboke land in Re-Survey No.102/6c and 7A part, T.S.No.133, Near pumping Station, Chokkalinga Nagar, 8th Street, Chokkalinga Nagar Main Road, Ponmeni Village, Madurai within the time frame fixed by this Court.

For Petitioner
For R1

: Mr.T.Lajapathi Roy
: Mr.D.Muruganantham
Addl. Government Pleader

For R2 & 3

: Mr.T.S.Mohamed Mohideen
Standing Counsel for Corporation

**ORDER****[Order of the Court was delivered by T.S.SIVAGNANAM, J.]**

Heard Mr.T.Lajapathi Roy, learned counsel appearing for the petitioner and Mr.D.Muruganantham, learned Additional Government Pleader appearing for the first respondent and Mr.T.S.Mohamed Mohideen, learned Standing Counsel appearing for the respondent Corporation.

2.The petitioner himself is an encroacher of Government property, has come forward to this Court alleging that the fourth respondent has encroached into the Government property and has put up construction. The fourth respondent has filed a suit in O.S.No.585 of 2004, on the file of the Principal District Munsif Court, Madurai Town, in which, the respondent Corporation was the sole defendant. Though notice was served on the respondent Corporation, they did not appear and consequently an ex-parte decree came to be passed on 17.08.2006. The respondent Corporation did not take any steps to set aside the ex-parte decree and allowed it to attain finality. Thus, the decree of the Civil Court will bind the respondent Corporation. The petitioner alleges that the fourth respondent has put up unauthorized construction, without obtaining any planning permission. If it is correct, then the respondent Corporation are bound to take action in accordance with law.

3.The learned counsel for the respondent Corporation submits that the petitioner, who is also an encroacher, has filed a suit in O.S.No.232 of 2017, on the file of Principal District Munsif Court and the same is pending. Therefore, this Court is not inclined to issue any direction at the instance of the petitioner, who himself is an encroacher. The petitioner has approached this Court complaining that certain private parties are violating principle of law and are not acting in an equitable manner and if he himself is an violator, the writ petitioner is to be thrown out at the very threshold. However, we observe that the respondent Corporation cannot be a spectator for an illegal construction, being put up within its jurisdiction.

4.Regardless of the complaints received from the third parties due action has to be initiated by the respondent Corporation and should ensure that no illegal constructions are put up or constructions are made in violation of the approved building plan.

5.With the above observation, this writ petition is dismissed. No costs. Consequently the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar



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Madurai Corporation,
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Madurai.

+ 1 CC TO Mr.T.LAJAPATHI ROY, ADVOCATE IN SR No. 53409
+ 1 CC TO Mr.T.S.MOHAMED MOHIDEEN, ADVOCATE IN SR No. 53099
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 53637

NS

TE/KK/SAR-2 : 28/03/2018 : 3P/7C

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W.M.P. (MD) .No.4735 of 2018
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