



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
AND
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P (MD) No.14694 of 2018
and
W.M.P (MD) No.13245 of 2018

A.Arockiyadoss

... Petitioner

Vs.

- 1.The Commissioner,
Trichirapalli Municipality Corporation,
Trichy.
- 2.The Assistant Commissioner,
Ariyamangalam Division,
Trichirapalli Municipal Corporation,
Trichy.
- 3.The Assistant Director of
Survey and Land Records,
Trichy.
- 4.The Town Sub Inspector of Surveys,
Trichirapalli Municipal Corporation,
Trichy.

5.Easter Raj

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari thereby call for the records of the 2nd respondent in Na.Ka.No.F1/6728/2015 Ariya., dated 14.06.2018 and quash the same as illegal and arbitrary.

For Petitioner : Mr.P.Ganapathi Subramanian
For respondents 1 to 4 : Mr.N.S.Karthikeyan
Additional Govt. Pleader

ORDER

(Order of the Court was made by M.DURAI SWAMY, J.)

The petitioner has filed the above writ petition to issue a writ of certiorari to call for the records of the second respondent dated 14.06.2018 and quash the same.



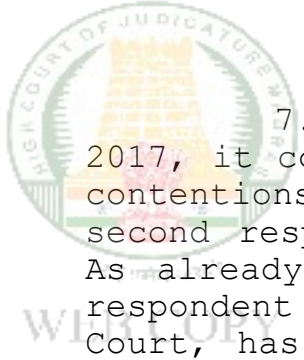
2.It is the case of the petitioner that his property comprised in S.F.No.439/15 UDR 236/2C was classified as Natham in the year 1972 and that a patta was issued in favour of his father. According to the petitioner, his father put up a terraced house in the said property 60 years ago and that they are in continuous possession and enjoyment of the same. The petitioner's father executed a settlement deed dated 25.1.2018, settling the house property in favour of the petitioner. According to the petitioner, the fifth respondent is residing just opposite to his house and he filed a writ petition against the petitioner and the first respondent and others as if the petitioner has encroached a portion of the street and this Court by order dated 01.09.2017, directed the first respondent to follow the statutory procedure, if the petitioner's construction encroached the public road. The second respondent by his proceedings dated 07.11.2017, directed the petitioner to remove the encroachment.

3.The learned counsel appearing for the petitioner submitted that the second respondent is not the competent authority to take appropriate action, as per Section 258 of the Trichirapalli City Municipal Corporation Act, 1994.

4.However, the learned counsel appearing for the respondent Corporation submitted that under Section 18 of the Trichirapalli City Municipal Corporation Act, 1994, the Commissioner has got powers to delegate the jurisdiction to some other Officer. Accordingly, the second respondent has passed the impugned order, which is valid in law.

5.We agree with the submissions made by the learned counsel appearing for the respondent that the second respondent has got jurisdiction to pass the impugned order. The learned counsel appearing for the petitioner further submitted that apart from the petitioner, the other residents of the area have also encroached the road, however, the respondent Corporation has not taken any action against them for removing the encroachment. The learned counsel submitted that the respondent Corporation should also be directed to remove the encroachment made by the other occupants of the houses in the said street.

6.On a perusal of the impugned order, it is clear that the second respondent has given due opportunity of personal hearing to the petitioner. However, the petitioner did not utilize the same. On the earlier occasion, the petitioner filed a writ petition in W.P.(MD).No.23258 of 2017, challenging the order passed by the second respondent dated 07.11.2017 and this Court, by order dated 20.12.2017, disposed of the writ petition by directing the petitioner to file a reply within a period of two weeks and also directed the second respondent to pass orders in accordance with law. Pursuant to the said order, the second respondent had passed the impugned order dated 14.06.2018.



7. On a perusal of the order passed in W.P.(MD).No.23258 of 2017, it could be seen that the petitioner had raised the very same contentions raised in the present writ petition stating that the second respondent has no jurisdiction to pass the impugned order. As already stated, in view of Section 18 of the Act, the second respondent has got jurisdiction to pass the impugned order. This Court, has already decided the said issue on the earlier occasion and the petitioner has raised the same points in the present writ petition also. The order passed by the second respondent is just and proper and we do not find any error or illegality in the order passed by the second respondent, since the learned counsel appearing for the petitioner submitted that the respondent Corporation should also be directed to take action against the other encroachers, while confirming the impugned order, dated 14.06.2018, we also direct the respondent Corporation to initiate action for removal of encroachment in accordance with law, if any, made by the other occupants of the houses in the said street.

8. With these observations, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Commissioner,
Trichirapalli Municipality Corporation,
Trichy
2. The Assistant Commissioner,
Ariyamangalam Division,
Trichirapalli Municipal Corporation,
Trichy.
3. The Assistant Director of
Survey and Land Records,
Trichy.
4. The Town Sub Inspector of Surveys,
Trichirapalli Municipal Corporation,
Trichy.

+1cc to M/S.N.S.Karthikeyan, Advocate SR.No. 72892

W.P (MD) No.14694 of 2018
11.07.2018