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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 31.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA
and

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. (MD) No.22126 of 2018

and

W.M.P. (MD) No.20059 of 2018

C.Raguram Babu

... Petitioner

Vs.

Madurai City Municipal Corporation,
Rep. by its Commissioner,
Arigner Anna Maaligai, Out Post,
Thallakulam,
Madurai.

... Respondent

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 relating to the impugned proceedings of the respondent dated 23.10.2018 and quash the same.

For Petitioner : Mr.C.Arul Vadivel @ Sekar
for M/s.N.Dilip Kumar

For Respondent : Mr.R.Murali

ORDER

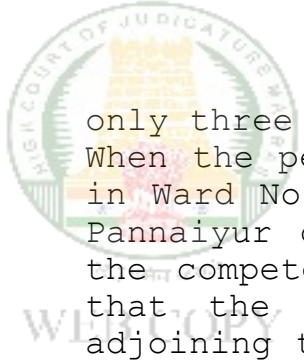
(Order of the Court was made by T.RAJA, J.)

This Writ Petition is directed against the impugned order dated 23.10.2018 issued by the Commissioner, Madurai Corporation, respondent herein, calling upon the petitioner to vacate and remove the encroachment made by constructing a house bearing Door No.83/16 in Ward No.72 at Narasimhapuram Main Road to an extent of 28.40 meter (030 mt. x 030 mt/2).

2.Mr.R.Murali, learned Standing Counsel takes notice for the respondent.

3.By consent, this Writ Petition is taken up for final disposal.

4.The learned Counsel appearing for the petitioner submitted that the Commissioner, Madurai Corporation, without even conducting proper survey and making measurement of the land in question, has wrongly issued the impugned proceedings, dated 23.10.2018, giving



only three days time to remove the encroachment and leave the place. When the petitioner has constructed his house bearing Door No.83/16 in Ward No.72 at Narasimhapuram Main Road which is 9 ft. away from Pannaiyur canal only after getting proper planning permission from the competent authority, it is not open to the respondent to say that the petitioner has put up his construction in the land adjoining to the water canal. This has been properly considered by the respondent Corporation when the petitioner made application seeking grant of approval for raising his building construction in its proceedings dated 24.12.2009 only on the basis of this, the petitioner has constructed three storied building with ground floor, first floor and second floor. The learned Counsel appearing for the petitioner further submitted that Pannaiyur canal runs on the south of his property and it is under the control of the Public Works Department and the Public Works Department also constructed a reinforced concrete canal to the entire stretch. Therefore, the Public Works Department alone got the right to issue any notice if there is any encroachment.

5.Mr.R.Murali, learned Standing Counsel appearing for the respondent and also Mr.V.R.Shanmuganathan, learned Special Government Pleader, refuting the statement made by the learned Counsel appearing for the petitioner that the Public Works Department has constructed the reinforced concrete canal stated that the reinforced concrete canal was only constructed by the Corporation and the Corporation is maintaining the canal. The learned Standing Counsel appearing for the respondent also requested us to fix a date for survey and re-measurement.

6.The learned Counsel appearing for the petitioner also submitted that an application was given on 06.07.1994 to the Commissioner, Madurai Corporation seeking restoration of the electricity service connection in T.S. No.549/64/4 wherein a note has been made by the City Town Planning Officer that the house is constructed within the patta land based on which the electricity service connection was restored. Therefore, the respondent shall look into that aspect also.

7.As the petitioner has got little grievance that the impugned proceedings has been issued without undertaking any survey or measurement of the land in question and also called upon the petitioner to vacate and remove the alleged encroachment within three days time, we direct the respondent to once again survey and re-measure the land in question on the basis of the revenue records available with them in the presence of the petitioner. Accordingly, the petitioner and the respondent are directed to be present in the building in question for survey and re-measurement at 11.00 a.m. on 02.11.2018 (Friday) and after survey and re-measurement, if the respondent on the basis of the revenue records comes to a conclusion that the petitioner has encroached into the canal area, it is open to them to take necessary action in accordance with law.



8. With the above direction, this Writ Petition is disposed of. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (T&P)

Sub Assistant Registrar (CS-III)

To

The Commissioner,
Madurai City Municipal Corporation,
Arigner Anna Maaligai, Out Post,
Thallakulam,
Madurai.

+1CC to M/s.N.Dilip Kumar, Advocate, SR.No.94081

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