



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2018

CORAM:

**THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MRS. JUSTICE R. THARANI**

W.P. (MD) No. 23337 of 2018
and
W.M.P. (MD) Nos. 21200 & 21201 of 2018

M.K. Gopal : Petitioner

Vs.

The Commissioner,
Madurai Corporation,
Anna Maligai,
Madurai. : Respondent

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating with the notice for removal of encroachment dated 24.10.2018 issued by the respondent, relating with the alleged encroachment to an extent of 9.90 X 0 + 1.20 meter, made in Panaiyur Vaikal by the petitioner and quash the same as it is arbitrary and illegal and against the guideline issued by the Full Bench of this Court reported in 2005(2) CTC 741.

For Petitioner : Mr. R. Suriya Narayanan
For Respondent : Mr. R. Murali

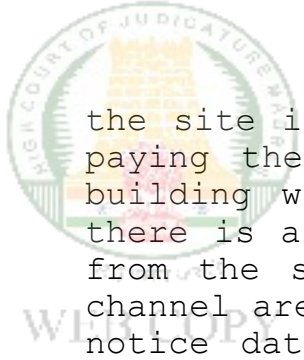
ORDER

[Order of the Court was made by R. SUBBIAH, J]

Challenging the impugned notice dated 24.10.2018 issued by the respondent, the present writ petition has been filed.

2. Heard Mr. R. Suriya Narayanan, learned counsel appearing for the petitioner and Mr. R. Murali, learned counsel appearing for the respondent.

3. The petitioner is the absolute owner of the building bearing No. 8, Nayanathanpuram 4th Street, Kamarajar Salai, Madurai by virtue of a registered Will dated 10.09.1982. The petitioner has been in possession and enjoyment of the said building by obtaining patta to



the site in his name. The petitioner has made further construction paying the property tax, water tax and other charges etc to the building without any default. On the south of the said building, there is a channel and the building is situated about 10 feet away from the said channel. There is no question of encroachment into channel area. While the facts are being so, the respondent affixed a notice dated 24.10.2018 on the door of the petitioner's building stating that the petitioner has to remove an encroachment alleged to be made in the channel to an extent of 9.90 X 0+1.20 meter within 3 days from the date of receipt of the notice.

4.The only grievance of the petitioner is that before issuing the impugned notice, no show cause notice was issued to him calling for explanation. In support of his contention, the learned counsel for the petitioners had relied upon a Full Bench judgment 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 in paragraph No.38 it has been held as follows:

"38. It is of course true that in the two counter affidavits, the municipalities have taken the stand, quite expectedly and understandably, that they have no intention to take any step for removal of any encroachment from the road or road margins without following the due procedure of law and they do not have the intention to take steps for eviction of any person from any land not belonging to the municipalities. However, since the news item appearing in the News Papers gives the impression as if Rajapalayam Municipality intended to remove all encroachments pursuant to the order passed by the High Courts in W.P.No. 689 of 2005 and since certain misconceptions have arisen as if the Division Bench has given a blanket direction for removal of encroachment even without following due process of law, the matter is required to be clarified in the following manner :

(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 atleast two weeks time should be served and, if the person avoids to receive the notice, such notice can be effected by affixure. 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.

(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. "

5. Though many contentions have been raised by learned counsel for the petitioner, the main contention is that the respondent has not issued any show cause notice calling for explanation from the petitioner to remove the alleged encroachment. Therefore, the impugned notice is liable to be set aside.

6. It is the duty of the respondent to give notice to the petitioner and hear the petitioner and then pass final order. Therefore, we are of the opinion that instead of quashing the impugned notice dated 24.10.2018, it would be treated as a show cause notice. Accordingly, the impugned notice issued under Rules 236, 256, 257, 258, 472, 472 & 503 of Madurai Corporation Rules is directed to be treated as show cause notice and the petitioner is directed to give his reply to the above said notice within a period of 15 days from the date of receipt of copy of this order. On receipt of the said reply, the respondent is directed to hold an enquiry and after giving an opportunity of hearing to the petitioner, shall pass appropriate orders on merits within a period of 12 weeks thereafter. In case, the respondent finds there is an encroachment, he is at liberty to remove the same in accordance with law.

7. Accordingly, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar (CS-IV)



To

The Commissioner,
Madurai Corporation,
Anna Maligai,
Madurai.

+ 1 CC TO Mr.R.SURIYA NARAYANAN, ADVOCATE IN SR No. 97957

CM

TE/BK/SAR-4 : 26/12/2018 : 5P/3C

Order made in
W.P. (MD) No. 23337 of 2018 and
W.M.P. (MD) Nos. 21200 & 21201 of 2018
Dated: 30.11.2018