

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2019

C O R A M

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P.No.26556 of 2010

&

M.P.No.1 of 2013

V.S.Jayakumar ...Petitioner

Vs.

1. The Commissioner,
Arakkonam Municipality,
Arakkonam,
Vellore District.

2. Dr.A.Ramamurthy

3. M.G.Shanmugham

4. M.Balakrishnan

...Respondents

[R2 to R4 impleaded as per Court Order
dated 05.03.2013 in M.P.No.1 of 2011]

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to forbear the respondent from interfering with the petitioner's peaceful possession and enjoyment of the shops and buildings found in Gandhi Road at Door No.476, 48, 49, 50, 51, 52, 52(a) and Door No.1, 1a, 2, 2(a) at Mosque Road in Arakkonam Town, Vellore District, except by the procedures contemplated under the Tamilnadu District Municipalities Act, 1920 or any other due process of law.

For Petitioner : Mr.D.Vairamoorthy

For Respondents : Mr.Thirugnanam for R1

Mr.T.M.Naveen for R2 to R4

O R D E R

The petitioner filed this Writ Petition, to issue a writ of Mandamus, forbearing the respondent from interfering with the petitioner's peaceful possession and enjoyment of the shops and buildings found in Gandhi Road at Door No.47n, 48, 49, 50, 51, 52, 52(a) and Door No.1, 1a, 2, 2(a) at Mosque Road in Arakkonam Town, Vellore District, except by the procedures contemplated under the Tamilnadu District Municipalities Act, 1920 or any other due process of law.

2. The petitioner is the resident of No.24, River Bank Road, Nemili Post, Arakkonam Taluk, Vellore District. The petitioner is the absolute owner of the well constructed Commercial Complex consisting of small shops found at Gandhi Road in Door Nos.147b, 48, 49, 50, 51, 52, 52(a) and shops found at Mosque Road in Door No.1, 1a, 2, 2(a) [hereinafter referred to as 'Shops'] in Arakkonam Town, Vellore District. The petitioner succeeded the said shops as per the compromise decree passed in O.S.No.99 of 1998 on the file of the Sub Court, Ranipet, Vellore District, as per the terms of the compromise entered in to between the petitioner and his siblings in the said suit for partition of their father's property. While that being so, the first respondent Officials and Engineers made an inspection on 21st November, 2010 and informed that the entire constructions and structures at site will be demolished by tomorrow. Due to the act of the first respondent, having no other alternative efficacious remedy, the petitioner has filed the present writ petition.

3.The learned counsel for the petitioner would submit that no person can be deprived his property without due process of law. However, in the present case, the first respondent Municipality tried to evict the petitioner from his land without issuing show cause notice or providing personal hearing of the petitioner, which is illegal and arbitrary. Hence, he prays for allowing the above writ petition.

4.Per contra, Mr. Thirugnanam, learned counsel for the 1st respondent would submit that the petitioner has encroached upon the Road (Mosque Street) belongs to the first respondent and put up constructions. The first respondent has been maintaining the road and the encroachment made by the petitioner in the Mosque Street creates inconvenience to the general public and accordingly, the first respondent has taken steps to survey the Street and mark the encroachment made by the petitioner. It is

further stated that the first respondent is entitled to take action for removal of the encroachment under the provisions of the Tamil Nadu District Municipalities Act, 1920. Even though the first respondent has taken steps to survey the street and mark the encroachment, the petitioner has filed the writ petition to prevent the authorities from taking steps to remove the encroachment. Accordingly, he prays for dismissal of the writ petition.

5. It appears that the first respondent Municipality filed a counter affidavit stating that the petitioner had encroached upon the road and put up constructions which caused inconvenience to the general public. In view of the specific allegation against the petitioner that he had encroached upon the road and put up constructions, the prayer sought for in the writ petition cannot be granted. However, there shall be a direction to the first respondent to measure the road in question after giving notice to the petitioner and after providing personal hearing to the petitioner and if the first respondent finds any encroachment by the petitioner, the first respondent is at liberty to remove the encroachment without any notice.

6. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

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To
The Commissioner,
Arakkonam Municipality,
Arakkonam,
Vellore District.

+1cc to Mr.R.Thirugnanam , Advocate SR.No. 64403
+1cc to Mr.K.P.Jotheeswaran , Advocate SR.No. 64922

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A.SK(27/08/2019)