



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2019

CORAM:

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

W.P(MD)NO.20475 OF 2019
and
W.M.P(MD)No.17098 of 2019

P.Balakrishnan :Petitioner

.vs.

1.The Executive Officer,
Agasteeswaram First Grade Panchayat,
Agasteeswaram,
Kanyakumari District.

2.S.Nagarajan : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to the impugned order passed by the first respondent in Na.Ka.No.432/2017/A1, dated 16.09.2019 and to quash the same as illegal.

For Petitioner :Mr.M.P.Senthil

For Respondent-1 :Mr.A.Muthukaruppan
Addl.Govt.Pleader

O R D E R

[Order of the Court was made by T.S.SIVAGNANAM.,J.]

Heard Mr.M.P.Senthil, learned counsel appearing for the Petitioner and Mr.A.Muthukaruppan, learned Additional Government Pleader, who accepts notice for the first respondent.

2.By consent of either side, the Writ Petition is taken up for final disposal.

3.In the light of the glaring error committed by the first respondent in issuing the impugned notice and this Court being concerned only with the validity of the notice, we deem it



appropriate to dispense with the notice to be served on the second respondent.

4.The Petitioner is termed as an encroacher in the impugned notice. From the photographs produced before us, prima facie we are of the view that the Petitioner is not an encroacher. The other house in the said road should be treated as an encroachment. It is further submitted that the second respondent is already an encroacher. However, we do not wish to go into the controversy as of now as we find that impugned notice is issued to remove the encroachment made. No show-cause notice was issued to the Petitioner and it appears that no inspection was conducted, after notice to the Petitioner. It is not clear as to whether the second respondent, who had proposed to erect a cell-phone tower, had obtained the requisite permission in terms of the Government Order issued recently. All these defects being inherent in the impugned notice, the same deserves to be quashed.

5.Accordingly, the Writ Petition is allowed and the impugned order is quashed. However, it is open to the appropriate authority to conduct proper inspection of the entire area in that locality and if there is any encroachment, notice to be issued to all those persons, affording sufficient opportunity to all those persons which may include the Petitioner and appropriate orders be passed by the second respondent in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

vsn

To

The Executive Officer,
Agasteeswaram First Grade Panchayat,
Agasteeswaram, Kanyakumari District.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-88642[F] dated 23/09/2019)

ORDER MADE IN
W.P(MD)NO.20475 OF 2019 and
W.M.P(MD)No.17098 of 2019
23.09.2019

JMN(04.10.2019) 2P : 3C