



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P.[MD]No.22272 of 2019

and

W.M.P.[MD]No.19055 of 2019

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R.R.Nagar (Electricity Board Employees)
Kudiyiruppu Nala Sangam,
Rep. by its Secretary,
T.Sachithanandam,
S/o. A.Thirumal,
No.1/613, R.R. Nagar,
Thiruppalai, Madurai - 625 014.

: Petitioner

Vs.

The Commissioner,
Madurai Municipal Corporation,
Madurai.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the impugned notice issued by the respondent for removal of encroachment vide Na.Ka.No.Ma2A5/04559/19 dated 09.10.2019 and to quash the same as illegal as devoid of merits and further direct the respondent to maintain the nature and character of open space reserve for the public purposes, park, play field and children play space as per the R.R.Nagar lay out approved by the Town and Country planning authority.

For Petitioner : Mr.Raja Karthikeyan

For Respondent : Mr.R.Murali

Standing Counsel

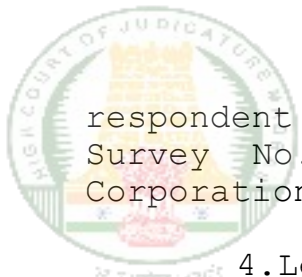
O R D E R

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

By consent of both parties, the Writ Petition is taken up for disposal at the admission stage itself.

2.Heard Mr.Raja.Karthikeyan, learned Counsel appearing for the petitioner Sangam and Mr.R.Murali, learned Standing Counsel accepting notice on behalf of the respondent Corporation.

3.The petitioner is a Residence Welfare Association, formed by the residents of R.R. Nagar, in Thiruppalai, Madurai District. The petitioner association is aggrieved by the notice issued by the



respondent Corporation stating that there is an encroachment in Survey No.261/5, which is a land vested with the respondent Corporation.

4.Learned Counsel for the petitioner has produced the approved layout plan as approved by the Deputy Director of Town and Country Planning, Madurai Region, vide proceedings dated 28.10.1987, in Approval No.6036/87/MM-3. It is the submission of the learned Counsel for the petitioner that strictly in accordance with the approved layout, plots have been divided and the common area has been indicated in the approved plan. According to the petitioner, it is not clear as to what is the encroachment which the petitioners have caused because the Survey number which is mentioned in the impugned notice is an area which falls within the road as well as the areas reserved for children's playground and over head tank and for shops.

5.We have seen the approved layout and we find that to an extent of 183.289 meters, approval has been granted for shops, which covers 1.01% of the total layout area. On a reading of the impugned notice, it is seen that the respondent Corporation has not indicated as to what is the actual extent of encroachment, which portion of the land vested with the Corporation has been encroached. In other words, the impugned notices is absolutely vague. Therefore, based on such a vague notice, the petitioner cannot be called upon to submit their explanation as they will not be in a position to explain the fact that there is no encroachment and the respondent Corporation has not indicated as to where the encroachment is. Therefore, it necessarily follows that the respondent Corporation should issue proper notice enclosing the plan clearly delineating the encroached land.

6.In the light of the above conclusion, the impugned notice should be necessarily set aside. For the above reasons, the impugned notice is set aside. We direct the respondents to issue a fresh notice within a period of one [1] week from the date of receipt of a copy of this order, clearly indicating the nature of encroachment and a sketch should be appended to the notice and the petitioner association should be granted 15 days time to submit their objections, after which an enquiry be conducted. The documents which may be produced by the petitioner association may be considered and a speaking order may be passed in accordance with law.

7.It is submitted by Mr.Raja. Karthikeyan, learned Counsel appearing for the petitioner that there is a hidden agenda behind the impugned notice. He does not impute allegations against the officials of the Corporation but would submit that there is a third party who is attempting to occupy the shop area for which the petitioner association has been waging a battle for the past 20 years. It is clear that the respondent Corporation should



consider the facts of the case as projected by the petitioner association and take a decision on merits and in accordance with law without being in any manner carried away by any statement made by any party.

8.The Writ Petition stands allowed, accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

MR

To
The Commissioner,
Madurai Municipal Corporation,
Madurai.

+1 CC to M/s.RAJA.KARTHIKEYAN, Advocate (SR-93840[F] dated 23/10/2019)

+1 CC to M/s.M.SURESH KUMAR, Advocate (SR-93935[F] dated 23/10/2019)

W.P.[MD]No.22272 of 2019

Dated: 22.10.2019

KK/SAR/08.11.2019/3P-4C/