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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**DATED: 22.11.2019**

CORAM:

THE HONOURABLE **MR.JUSTICE T.S.SIVAGNANAM**

and

THE HONOURABLE **MRS.JUSTICE R.THARANI**

**Writ Petition (MD).No.24818 of 2019**

**and**

**W.M.P (MD) .No.21403 of 2019**

M.Balachandran

... Petitioner

Vs.

1.The Commissioner,  
Madurai Corporation,  
Anna Maaligai,  
Tallakulam, Madurai-625 002.

2.The Assistant Commissioner,  
Madurai Corporation,  
Zone II,  
Race Course Road,  
K.Pudur, Madurai-625 007.

... Respondents

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the respondents pertaining to the impugned eviction notice in Na.Ka.No.Ma2/A3/08327/19 dated 11.11.2019 issued by the second respondent pertaining to an extent of 30.00 X 5.70 mts on the road side of the building in Survey No.84/1J3 bearing Door No.8B at Anna Nagar West Nain Road, Kuruvikaran Salai, Madurai 625 020 and to quash the same with a direction to the first respondent to oblige the order of this Court passed in W.P(MD).No.21713 of 2019 dated 16.10.2019.

For Petitioner : Mr.S.Chandrasekaran

For Respondents : Mr.R.Murali



**O R D E R**

(Order of the Court was made by **T.S.SIVAGNANAM, J.**)

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Heard Mr.S.Chandrasekaran, learned counsel appearing for the petitioner, Mr.R.Murali, learned counsel appearing for the respondents.

2.By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

3.This writ petition has been filed challenging the notice issued by the respondent Corporation alleging that the petitioner has encroached the land owned by the Corporation to the extent of 30.00 X 5.70 meters. It is stated to be approximately 1838 sq. ft. Before issuance of the impugned notice, no survey appears to have been conducted that too after notice to the petitioner.

4.The learned counsel for the petitioner would submit that it is the petitioner, who assisted the corporation of Madurai to retrieve the land, which was a Corporation land, which was encroached by one K.Muthu and P.Packianathan who had filed W.P(MD). Nos.16635 and 16636 of 2017 and the petitioner herein impleaded themselves in the matter, which was later disposed of on 01.03.2018. Pursuant to which, the land has been retrieved by the Corporation and compound has been erected. Referring to certain photographs, it is submitted that the compound wall constructed by the petitioner about 20 years back is clearly within the land owned by the petitioner and there is not even an inch of encroachment. The records placed before the Court show that neither inspection was conducted by the Corporation nor any survey was done in the presence of the petitioner and straightaway the impugned notice has been issued. In fact, after the impugned notice was received, the petitioner has sent a detailed representation on 18.11.2019, which is shown to have been delivered in the office of the respondent Corporation on 19.11.2019 vide postal tracking information.

5.In the light of the above, we are of the considered view that without conducting any inspection and survey, the respondent should not resort to summary eviction. In more or less identical circumstances, this Court had directed the survey to be conducted and also fixed the date.

6.In the light of the above, the respondents are restrained from giving effect to the impugned notice for the present and there will be a direction to the respondent Corporation to survey the entire area on 26.11.2019 at about 12.00 noon. It is made clear that no separate notice would be issued to the petitioner because



this direction is issued in the petitioner's writ petition and the petitioner is directed to extent his full co-operation of the survey. Based on such survey, the respondent is at liberty to proceed in accordance with law.

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

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

TO

1. The Commissioner,  
Madurai Corporation,  
Anna Maaligai,  
Tallakulam, Madurai-625 002.

2. The Assistant Commissioner,  
Madurai Corporation,  
Zone II,  
Race Course Road,  
K.Pudur, Madurai-625 007.

+1 CC to M/s.R. MURALI, Advocate ( SR-100848[F] dated 25/11/2019 )

+2 CC to M/s.S.CHANDRA SEKARAN, Advocate ( SR-20288[I] dated 22/11/2019 )

**Writ Petition (MD).No.24818 of 2019**

22.11.2019

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