

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.Nos.14990, 14991, 15009 & 15010/2020
& WMP.Nos.18648, 18651, 18688 & 18690/2020

S.Azhagiri ... Petitioner in
WP.No.14990/2020

P.Suresh @ Stephen ...Petitioner in
WP.No.14991/2020

V.Ramamurthy ...Petitioner in
WP.No.15009/2020

A.Nagarajan ...Petitioner in
WP.No.15010/2020

Versus

The Commissioner
Arani Municipality
Municipal Office
Arani, Tiruvannamalai District-632301. ...Respondent in all
the writ petitions

Prayer in WP.No.14990/2020:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the file of the respondent in his proceedings in Na.K.aNo.1296/2020/F1 and quash the impugned notice dated 29.09.2020 for removal of encroachment and the consequent Notice dated 29.09.2020 for demolition of the petitioner's building at No.18-20, Suryakulam East Street, Karthikeyan Road, comprised in Town Survey No.2, Block No.B6, Survey No.14 [Part] as per the impugned Notice dated 29.09.2020 in Ward 'B', Arani Town, Tiruvannamalai District.

Prayer in WP.No.14991/2020:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the file of the respondent in his proceedings in Na.K.aNo.1296/2020/F1 and quash the impugned notice dated 29.09.2020 for removal of encroachment and the consequent Notice dated 29.09.2020 for demolition of the

petitioner's building at 21B, Suryakulam East Street, Karthikeyan Road, comprised in Town Survey No.7, Block No.B6, Survey No.14 [Part] as per the impugned Notice dated 29.09.2020 in Ward 'B', Arani Town, Tiruvannamalai District.

Prayer in WP.No.15009/2020:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the file of the respondent in his proceedings in Na.K.aNo.1296/2020/F1 and quash the impugned notice dated 29.09.2020 for removal of encroachment and the consequent Notice dated 29.09.2020 for demolition of the petitioner's building at No.33, Suryakulam East Street, Karthikeyan Road, comprised in Town Survey No.2, Block No.B6, Survey No.14 [Part] as per the impugned Notice dated 29.09.2020 in Ward 'B', Arani Town, Tiruvannamalai District.

Prayer in WP.No.15010/2020:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the file of the respondent in his proceedings in Na.K.aNo.1296/2020/F1 and quash the impugned notice dated 29.09.2020 for removal of encroachment and the consequent Notice dated 29.09.2020 for demolition of the petitioner's building at No.148A, Suryakulam East Street, Karthikeyan Road, comprised in Town Survey No.7, Block No.B6, Survey No.14 [Part] as per the impugned Notice dated 29.09.2020 in Ward 'B', Arani Town, Tiruvannamalai District.

For Petitioners in
all WPs : Mrs.Karthika Ashok

For Respondent in
all WPs : Mr.L.P.Maurya
Standing counsel

COMMON ORDER

- (1) By consent, the writ petitions are taken up for final disposal and are disposed of by this common order as the issue to be adjudicated and decided is one and the same.
- (2) Mr.L.P.Maurya, learned Standing counsel accepts notice on behalf of the respondent.
- WP.No.14990/2020:-
- (3) The petitioner claims to be in possession and occupation of Plot Nos.18 to 20, Suryakulam East Street, Arani Town and he would further aver that the said properties was in possession of his father Selvaraju for more than 30 years and after his demise, the petitioner succeeded to his estate and some shops have been constructed in the said properties and from the income earned, he is eking out his livelihood. The petitioner

would further state that the said properties have also been subjected to statutory levies and to his shock and surprise, the respondent-Municipality has issued the impugned Notice dated 29.09.2020 under Sections 142, 173, 180, 180A, 182, 313 and 362 of the Tamil Nadu District Municipalities Act, 1920, and the Rules framed thereunder and challenging the legality of the same, the present writ petition is filed.

WP.No.14991/2020:-

(4)The petitioner claims that he belongs to a poor family and his father, viz., Prakasam, was originally running a shop under the name and style as ''Prakasam Sound Service'' at Door No.21B, Suryakulam East Street, Karthikeyan Road, Arani and the petitioner is now carrying on the business with the aid and advise of his father and though his request for patta has been considered by the Revenue Authorities and he has been issued with Memos and that he is also paying the statutory levies, to his shock and surprise, the respondent-Municipality has issued the impugned Notice dated 29.09.2020 under Sections 142, 173, 180, 180A, 182, 313 and 362 of the Tamil Nadu District Municipalities Act, 1920, and the Rules framed thereunder and challenging the legality of the same, the present writ petition is filed.

WP.No.15009/2020:-

(5)The petitioner would state that he is a barber by profession and his father was running a Saloon shop under the name and style of ''Vasudevan Saloon'' at Door No.33, Suryakulam East Street, Karthikeyan Road, Arani and after his demise, on 23.01.2014, the pet has taken over his profession and started running the shop and the Local Body has also passed a Resolution in No.397 dated 16.09.1997, making a positive recommendation for the purpose of allotting 100 sq.ft., of space in his favour and thereafter, nothing is moving forward and to his shock and surprise, the respondent - Municipality has issued the impugned Notice dated 29.09.2020 under Sections 142, 173, 180, 180A, 182, 313 and 362 of the Tamil Nadu District Municipalities Act, 1920, and the Rules framed thereunder and challenging the legality of the same, the present writ petition is filed.

WP.No.15010/2020:-

(6)The claims that he belongs to a poor family and he is running a Cycle Repair Shop under the name and style of ''PNR Cycle Shop'' at Door No.148A, Suryakulam East Street, Karthikeyan Road, Arani, for more than 20 years and the Revenue Authorities, recognising his possession, also started making levies and however, to his shock and surprise, he has been issued with the impugned Notice dated 29.09.2020 by the respondent - Municipality under Sections 142, 173, 180, 180A, 182, 313 and 362 of the Tamil Nadu District Municipalities Act, 1920, and the Rules framed thereunder and challenging the legality of the same, the present writ petition is filed.

- (7) Mrs. Karthika Ashok, learned counsel for the petitioners would submit that in the light of the long possession and enjoyment of the landed properties in question and the superstructures put up thereon and further that the petitioners are having poor economic background and they are depending upon the income earned out of petty businesses being run by them, the respondent - Municipality should have shown some concern or accommodation and all of a sudden, the petitioners are sought to be dispossessed and prays for appropriate orders
- (8) Per contra, Mr. L.P. Maurya, learned Standing counsel appearing on behalf of the respondent - Municipality would submit that even as per the affidavits filed in support of these writ petitions, the predecessors of the petitioners as well as the petitioners are rank encroachers and since the eviction proceedings are being taken strictly in accordance with the relevant provisions of the Tamil Nadu District Municipalities Act, 1920, it is not open to the petitioners to make any grievance and prays for dismissal of these writ petitions with exemplary cost.
- (9) This Court has considered the rival submissions and also perused the materials placed before it.
- (10) It is relevant to extract Section 182 of the Tamil Nadu District Municipalities Act, 1920:-

''182:-Removal of Encroachments:-

- (1) The Executive authority may, by notice, require the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction [other than a door, gate, bar or ground-floor window] situated against or in front of such premises and in or over any street.
- (2) If the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto or that it was erected or made with the permission of license of any municipal authority duly empowered in that behalf, and that the period, if any, for which the permission or licence is valid has not expired, the municipal council shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same.''

- (11) In the light of Sub-section [2] of Section 182 of the said Act, the petitioners are at liberty to submit individual representations by enclosing relevant and authenticated documents to the respondent - Municipality within a period of

three weeks from the date of receipt of a copy of this order and upon receipt of the same, the respondent - Municipality is directed to consider the said representations on merits and in accordance with law and pass appropriate orders within a further period of four weeks thereafter and till the disposal of the said representations, the respondent - Municipality shall defer further decision in terms of the impugned Notices dated 29.09.2020. The petitioners, till the disposal of the representations by the respondent - Municipality, shall not create any third party rights in respect of the lands and superstructures in question and shall also not alter the physical features of the superstructures.

(12) At this juncture, it is represented by the learned counsel for the petitioners that the electricity service connection granted to the petitioners, have been disconnected and she would submit that in the light of the ensuing festive seasons and that apart, the petitioners are having a poor economic background eking out their livelihood by running small petty businesses, prays for restoration of the electricity service connection.

(13) This Court, taking into consideration, the above facts and circumstances, directs the respondent - Municipality to restore the electricity service connection in respect of the respective shops owned by the petitioners subject to the fulfillment of the relevant Norms and Regulations within a period of one week from the date of receipt of a copy of this order.

(14) The writ petitions stand disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

To
The Commissioner
Arani Municipality
Municipal Office
Arani, Tiruvannamalai District 632 201.

+4cc to Mr.J.Ashok, Advocate, Sr.No.34583, 34584, 34585 & 34586

WP.Nos.14990, 14991, 15009 & 15010/2020

nmi (co)
rr ii (27/11/2020)