



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2020

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD) No.7840 of 2020

and

W.M.P. (MD) No.7319 of 2020

(Through Video conferencing)

D.Kannaiah

...Petitioner

-Vs

State Through

1.The District Collector

O/o.The Collector

Madurai District,

Madurai.

2.The Commissioner

Madurai Corporation

Madurai.

3.The District Revenue Officer

O/o.The Collectorate Complex

Madurai.

4.The Revenue Divisional Officer

O/o.The Revenue Divisional Officer

Madurai.

5.The Tahsildar

Office of the Tahsildar

Collectorate Complex

Madurai.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the impugned notice in Na.Ka.No.Ma.2A3/02716/2020, 143333/19-20 issued by the 2nd respondent dated 22.05.2020 and quash the same as illegal and consequently direct the 2nd respondent not to disturb the petitioner in any way from the peaceful possession and enjoyment of the western portion of property comprising in Survey No.222/6 situated at Ward No.28, 4/64, Thiruvalluvar Street, Uthankudi, Madurai.

For Petitioner : Mr.L.Prabhu

For Respondents : Mr.VR.Shanmuganathan,

Special Govt. Pleader for R1 & R3 to R5

: Mr.S.Chella Pandian for R2

**ORDER**

[Order of the Court was made by **M. SATHYANARAYANAN, J.,**]

The petitioner claims to be a resident of Door No.4/64, Thiruvalluvar Street, Uthankudi, Madurai and according to him, the lands admeasuring to an extent of 5 acres and 22 cents comprised in Old Survey No.134/5 has been changed as Survey Nos.222/12 and 222/6 under Updating Registry Scheme (UDR) by the revenue authorities and the title relates to the lands have been registered in the year 1935, vide a sale deed, bearing Document No.1548 of 1935 on the file of the Tamaraipatti Sub-Registrar Office, Chittampatti, Madurai District. The petitioner also claims to have temporary patta and according to him, while carrying out Updating Registry Scheme, a mistake had crept in as if the lands, belongs to his forefathers, has been classified as a public road/pathway.

2. The learned counsel appearing for the petitioner would submit that the petitioner pointing out the said infirmity has submitted a detailed representation dated 02.06.2020 to the second respondent, enclosing the relevant documents and without considering the same, steps are underway to demolish the underground water tank, and sewerage tank and in that event, the petitioner and his family members are put to irreparable hardship and therefore, prays for appropriate orders.

3. Mr.VR.Shanmuganathan, learned Special Government Pleader accepts notice on behalf of respondents 1, 3, 4 and 5. Mr.S.Chellapandian, learned Standing counsel accepts notice on behalf of the second respondent.

4. The learned Standing Counsel appearing for the second respondent would submit that the impugned orders itself refers to various provisions and since action has been taken to remove the encroachments, strictly in accordance with law, the petitioner cannot have any grievance and therefore, prays for dismissal of this writ petition.

5. This Court has carefully considered the rival submissions. It is relevant to extract Section 258 of Madurai City Municipal Corporation Act, 1971:

'258. Removal of encroachments.

(1) *The Commissioner 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 or any public place the control of which is vested in the Corporation.*

(2) *If the owner or occupier of the premises*



proves that any such projecting encroachment or obstruction has existed for a period sufficient under the law of limitation to give him a prescriptive title or where such period is less than thirty years, for a period of thirty years or that it was erected with the consent of any Municipal Authority duly empowered in that behalf and that the period, if any, for which the consent is valid has not expired, the Corporation shall make compensation to every person who suffers damage by the removal or alteration of the same.'

6. In the light of Sub-Section (2) of Section 258 of Madurai City Municipal Corporation Act, 1971, the second respondent or the delegated officials shall consider the representation of the petitioner dated 02.06.2020 and dispose of the same on merits and in accordance with law and pass appropriate orders within a period of three weeks from the date of receipt of a copy of this order and till such time, the second respondent shall defer the further decision in terms of the impugned notice dated 22.05.2020. It is also made clear that the petitioner, till the disposal of the representation by the second respondent, shall not create any third party rights in respect of the land in question.

7. This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Vsm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Collector
O/o.The Collector
Madurai District,
Madurai.



2.The Commissioner
Madurai Corporation
Madurai.

3.The District Revenue Officer
O/o.The Collectorate Complex
Madurai.

4.The Revenue Divisional Officer
O/o.The Revenue Divisional Officer
Madurai.

5.The Tahsildar
Office of the Tahsildar
Collectorate Complex
Madurai.

+1 CC to M/s.S.CHELLAPANDIAN, Advocate (SR-13209[F] dated
23/07/2020)

+1 CC to M/s.R.MURALI, Advocate (SR-13208[F] dated 23/07/2020)

W.P. (MD) No.7840 of 2020
22.07.2020

KB(29.07.2020) 4P 8C