



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.08.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

WEB COPY

W.P (MD)No.7814 of 2020

and

W.M.P. (MD)No.7289 of 2020

Ponraj

... Petitioner

Vs.

The Executive Officer,
Nilakottai Town Panchayat,
Nilakottai,
Dindigul District.

... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order issued by the respondent in his proceedings in Na.Ka.No.342/2020, dated 03.06.2020 and quash the same and consequently direct the respondent not to disturb the lawful possession and occupation of the shops 7 and 8 situated at Nilakottai Town Panchayat at Nilakottai, Dindigul District.

For Petitioner : Mr.Veerakathiravan
Senior Counsel for
Mr.R.Sureshkumar

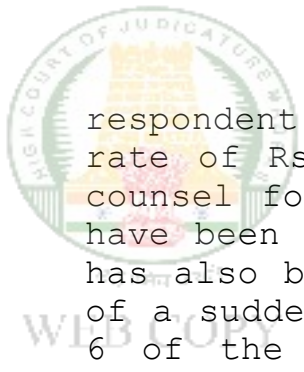
For Respondent : Mr.V.R.Shanmuganathan
Special Government Pleader

ORDER

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

The petitioner claims that he is a licensee in respect of shop Nos.7 and 8 situated at Nilakottai Town Panchayat for the period of 2017-2020, on becoming a successful bidder and he was granted license for the period from 01.04.2017 to 31.03.2020 on a monthly license fee of Rs.1,200/-. According to the petitioner, he is running a type writing centre as well as Xerox shop and it is housed in a semi permanent structure which itself was constructed by the respondent / local body.

2.The learned counsel appearing for the petitioner would submit that the license period was also extended for another three years from 01.04.2020 to 31.03.2023 vide proceedings of the



respondent dated 30.03.2020 with the enhanced license fee at the rate of Rs.1,380/- p.m. The primordial submission of the learned counsel for the petitioner is that despite the shops in question have been constructed by the respondent / local body for which he has also been given license which expires only on 31.03.2023, all of a sudden, the respondent had invoked the provisions of Section 6 of the Land Encroachment Act, 1905 and issued the impugned notice and even for the sake of argument the said notice is sustainable, due process of law contemplated under the said Act have to be followed and hence, prayed for allowing this writ petition.

3.Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondent / local body would submit that though the land in question vests with the local body, in the light of the fact that the superstructure, which is the subject matter of license in favour of the petitioner, found to be an encroachment, the provisions of Land Encroachment Act has been invoked erroneously and he would further plead that appropriate legal action under Section 131 of the Tamil Nadu Panchayats Act, 1994, would be initiated and due process of law would be followed against the petitioner.

4.This Court has carefully considered the rival submissions and perused the materials available on record.

5.No doubt, the petitioner is carrying on business in the semi permanent structure put up by the local body itself and having license upto 31.03.2023. It is the submission of the respondent / local body that the construction of the semi permanent structure is an encroachment and therefore, they have taken steps to remove the said encroachment in public interest.

6.In the considered opinion of this Court, the impugned notice issued under the provisions of Section 6 of the Land Encroachment Act, on the face of it, is unsustainable for the reason that the land in question belongs to the respondent / local body and in such an event, the remedy open to the respondent, if any, is to invoke Section 131 of the Tamil Nadu Panchayats Act, 1994.

7.In the result, the writ petition is partly allowed and the impugned proceedings of the respondent, dated 30.06.2020 is set aside and the respondent is granted liberty to invoke appropriate provisions of the Tamil Nadu Panchayats Act and Rules framed thereunder against the petitioner and also by adhering to the principles of natural justice and complete the exercise as expeditiously as possible preferably within a period of eight weeks from the date of receipt of copy of this order and till the



culmination of the said proceedings, the possession of the petitioner in respect of the shops in question need not be interfered with. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Deputy Registrar (LA&M)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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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

The Executive Officer,
Nilakottai Town Panchayat,
Nilakottai,
Dindigul District.

W.P (MD) No.7814 of 2020
18.08.2020

KM (27.08.2020) 3P 2C