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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2020

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD).No.10388 of 2020

V.Eswaran

... Petitioner

Vs.

- 1.The Commissioner,
Office of the Theni Allinagaram Municipality,
Theni, Theni District.
- 2.The Commissioner of Municipal Administration,
Office of the Municipal Administration Department,
No.75, Santhome Highway, 10th Floor,
Raja Annamalaipuram, Chennai - 28.
- 3.M.Raja Asst,
Axiz Bank No.581, Gandhiji Road,
Madurai Road, Theni,
Theni District.

... Respondents

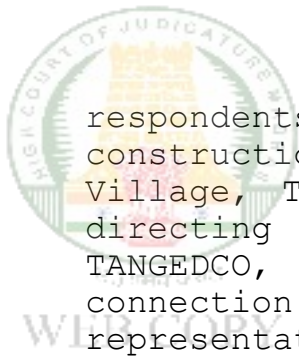
Prayer: The Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the first respondent to take further action against the third respondent pursuant to the statutory notice / order dated 27.02.2020 issued by the first respondent under Sections 199, 216(1)(2) of the Tamil Nadu District Municipalities Act, 1920 and to initiate proceedings against the illegally constructed building of the third respondent as per Sections 56 and 57 of the Town and Country Planning Act, 1971 in respect of Survey No.233/1 situated at Allinagaram Village, Theni District, based on the petitioner's representation dated 26.05.2020 within a stipulated time.

For Petitioner : Mr.V.Eswaran(Party-in-Person)
For R-1 & R-2 : Mr.R.Murugan,
Additional Government Pleader

O R D E R

(Order of the Court was made by **M. SATHYANARAYANAN, J.**)

The petitioner on an earlier occasion filed W.P(MD)No.19462 of 2016 against the Commissioner of Theni Allinagaram Municipality, Theni District and nine others including private respondents, praying for issuance of a Writ of Mandamus, directing the



respondents 1 to 3, to take appropriate action to stop the illegal construction under progress in Survey No.233/1 of Allinagaram Village, Theni District by the respondents 6 to 10 and also by directing the fifth respondent Executive Engineer (Distribution) TANGEDCO, Theni District, not to provide new electricity service connection in respect of Survey No.233/1 based on his representation, dated 31.07.2019. The said writ petition came to be dismissed subject to some observations and it is relevant to extract Paragraph No.5 of the said order:

"5. In our considered view, the petitioner has confused two of his rights. One being a civil right and another pertaining to adherence to the rules and regulations by a person, who intends to put up a construction. These two issues cannot be mixed up. So far as the first issue regarding the entitlement of the property is concerned, the Writ Court cannot issue any direction. It is not the case of the petitioner that the respondents 7 to 10 have encroached the Government land, road or pathway. With regard to the second aspect viz., as to whether the construction proposed to put up by the respondent Nos.7 to 10 is authorized or not, it is for the first respondent / Municipality to take into consideration. However, considering the complexity of the civil issue, we cannot issue any positive direction to the Municipality. However, we permit the petitioner to pursue his representation before the first respondent Municipality, who shall proceed in accordance with law."

2. The petitioner / party-in-person has drawn the attention of this Court to the communication of the first respondent dated 27.02.2020 in Na.Ka.No.2501/2019/F-1, addressed to the petitioner and would submit that though the contents of the said communication would disclose that action is being taken against the third respondent in respect of the unauthorized construction in Survey No.233/1 in terms of Sections 199 and 216 (1)(2) of the Tamil Nadu District Municipalities Act, 1920, no progress is being taken and the representation dated 26.05.2020 submitted in this regard, also failed to invoke any kind of response and hence, he is constrained to approach this Court by filing this writ petition.

3. Mr.R.Murugan, learned Additional Government Pleader accepts notice on behalf of the respondents 1 and 2 and would submit that the similar relief made by the petitioner was repelled in the earlier order dated 09.09.2019 passed in W.P(MD)No.19462 of 2019 and in Paragraph No.5 of the order referred to supra, it is observed that *'however, considering the complexity of the civil issue, we cannot issue any positive direction to the Municipality'* and admittedly, the petitioner as well as the private respondents are at loggerheads and in the considered opinion of this Court, the remedy



opened to the petitioner if any is to invoke the provisions of the Right to Information Act, 2005, to know about the progress that is being made in the light of the above cited communication of the first respondent dated 27.02.2020 as well as the further follow up action in respect of his representation dated 26.05.2020.

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4. In the result, this Writ Petition is disposed of. No Costs. However, the petitioner is at liberty to invoke the provisions of the Right to Information Act, 2005 and obtain necessary information from the first respondent, in the light of the communication dated 27.02.2020 in Na.Ka.No.2501/2019/F-1 as well as the further follow up action in respect of his representation dated 26.05.2020.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pm

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 Commissioner,
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2. The Commissioner of Municipal Administration,
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