



WEB COPY

W.P.(MD)No.12775 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD)No.12775 of 2020

and

W.M.P (MD)Nos.10847 and 10848 of 2020

Muthaiah

... Petitioner

Vs.

1.The Government of Tamil Nadu,
represented by
The Secretary,
Revenue Department,
Secretariat,
Chennai.

2.The District Collector,
Madurai District,
Madurai.

3.The Corporation Commissioner,
Madurai Corporation,
Madurai.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order/notice, dated 08.09.2020 passed by the third respondent in M4/A6/004075/20 and quash the same and consequently, direct the respondents to regularise the petitioner's possession and grant patta to the petitioner.

For Petitioner : Mr.T.Saravana Pandian

For Respondents : Mr.R.Murugan
Additional Government Pleader for
R.1 & R.2

Mr.R.Murali
Standing Counsel for R.3

ORDER

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

Heard the submissions of the learned Counsel for the petitioner.

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2. The matter in issue pertains to a challenge made to the impugned notice issued on behalf of the third respondent for removal of encroachment caused by the petitioner.

3. Learned Counsel for the petitioner would submit that the petitioner belongs to Scheduled Caste community and 50 years ago, his father occupied a small piece of land at Muthupatti Kanmoi and put up a temporary superstructure and it is also subjected to statutory levies and after demise of his father, he continues to remain in occupation and enjoyment of the said small piece of land along with the superstructure and all of a sudden, to his shock and surprise, the impugned notice dated 08.09.2020 came to the issued on behalf of the third respondent under Sections 236, 256, 257, 258, 472, 473 and 503 of the Madurai City Municipal Corporation Act, 1971 and prays for appropriate orders.

4. Mr.R.Murugan, learned Additional Government Pleader accepts notice on behalf of the respondents 1 and 2 and Mr.R.Murali, learned Standing Counsel accepts notice on behalf of the third respondent.

5. It is relevant to extract hereunder Section 258 of the 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 projection, encroachment or obstruction has existed for a period of 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 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 the Madurai City Municipal Corporation Act, 1971, it is open to the petitioner to submit a detailed representation by enclosing the relevant and authenticated documents within a period of two weeks



from the date of receipt of a copy of this order, to the third respondent, who upon receipt of the same, shall either consider the said representation by himself or through the delegated authority and pass appropriate orders on merits and in accordance with law within a further period of two weeks thereafter. Till such time, the third respondent shall defer further proceedings in terms of the impugned notice, dated 08.09.2020 and it is also made clear that till the disposal of the representation of the petitioner by the third respondent or the delegated authority, the petitioner shall not create any third party rights in respect of the land and superstructure in question.

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

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

RSB

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 Secretary,
The Government of Tamil Nadu,
Revenue Department, Secretariat,
Chennai.

2.The District Collector,
Madurai District, Madurai.

+1 CC to SGP (SR-18390[F] dated 29/09/2020)

W.P. (MD)No.12775 of 2020

and

W.M.P(MD)Nos.10847 and 10848 of 2020

28.09.2020

AC (CO)

KM (06.10.2020) 3P 4C

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