

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 12.02.2021
CORAM
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN
WP.No.3222 of 2021
and W.M.P.Nos.3654 and 3656 of 2021

S.Sankar Singh

.. Petitioner

Versus

1.The Commissioner,
Cuddalore Municipality,
Bharathi Road,
Cuddalore 607 001.

2.The Town Surveyor,
Cuddalore Municipality,
Bharathi Road,
Cuddalore 607 001.

3.Singaravelu

4.Jose Kamal Morris

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari to call for the records and quash the impugned notice in Na.Ka.No.9922/F1/2020 dated 01.02.2021 issued by the 1st respondent and pass such further or other orders as this Court deems fit and proper in the circumstances of the case.

For Petitioner : Mr.Gururaj

For RR 1 & 2 : Mr.Kamalesh Kannan
Additional Government Pleader

WEB COPY
ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J. through video conferencing]

The petitioner, on an earlier occasion filed O.S.No.220 of 2002, against the 1st respondent on the file of the Court of Additional District Munsif at Cuddalore, praying for permanent injunction restraining the 1st respondent / defendant, his men,

agents and any person from interfering with his peaceful possession and enjoyment of the property, namely, the building bearing Door No.51-B, Bashyam Seddy Street, Manjakuppam, Cuddalore-1, admeasuring an extent of 350 sq.ft in T.S.No.1186. The Suit, after contest, came to be decreed on 27.06.2003, as prayed for and no Appeal has been preferred against the said judgment and decree and as such, it became final.

2. One Mr.S.Singaravelu, represented by his Power of Attorney, S.Kamalakanan, filed a Suit in O.S.No.311/2017, on the file of the Principal District Munsif, Cuddalore, against the 1st respondent as well as against the petitioner praying for removal of encroachment in respect of the property bearing New Survey No.1186/1A, New Ward No.7, Block 9, Re-survey no.421/1Aat Bashyam Reddy Street, Manjamkuppam, Cuddalore, admeasuring an extent of 0.0035 sq.m and the same is pending adjudication.

3. The learned counsel appearing for the petitioner would submit that one Jose Kamal Mores has filed W.P.No.17585 of 2020, on the file of this Court, against the Collector of Cuddalore District, 1st respondent and the petitioner, praying for a Writ of Mandamus to removal all sort of encroachment made by the 3rd respondent particularly in Re-Sruvey No.421/A, Ward No.7, Block No.20, Bashyam Reddy Street, Cuddalore, and it came to be disposed of by this Court, vide final order dated 10.12.2020, observing among other things that it did not go on merits either in his representation or in that Writ Petition with further direction, directing the 1st respondent herein, who was arrayed as 2nd respondent therein, to cause inspection of Bashyam Reddy Street, Cuddalore District, more particularly, Re-survey no.421/1A, Block No.9, New Ward No.7 and if the result of the inspection reveals any encroachment either on the part of the 3rd respondent therein or somebody else, shall take immediate, necessary and appropriate action by also adhering to the principles of natural justice and complete the said exercise within a period of 12 weeks from the date of receipt of a copy of that order, with a further direction to communicate the decision taken, to the writ petitioner therein / 3rd respondent as well as other encroachers and in compliance of the said order, the 1st respondent has issued a notice dated 20.01.2021 to the learned counsel for the petitioner herein.

4. It is the submission of the learned counsel appearing for the petitioner that in response to the said communication, a reply was sent in the form of legal notice dated 29.01.2021, pointing out the factual aspects and along with the said representation, photographs of the judgment and decree passed in O.S.No.220 of 2002, as well as the plaint in O.S.No.311 of 2017 has also been filed, to the 1st respondent Municipality and

despite receipt and acknowledgment, the 1st respondent by a cryptic notice, concluded that the petitioner has caused encroachment and since the 1st respondent has failed to adhere to the relevant materials, especially the legal notice sent on behalf of the writ petitioner dated 29.01.2021, prays for appropriate orders.

5. Per contra, Mr.Kamalesh Kannan, learned Government Advocate accepts notice on behalf of the respondents 1 and 2 and would submit that the impugned notice has been issued in compliance of the order dated 10.12.2020, made in W.P.No.17585 of 2020.

6. This Court has carefully considered the rival submissions and also perused the materials placed before it.

7. The 1st respondent, vide communication dated 20.01.2021 in Na.Ka.No.9922/2020/F1, has called upon the learned counsel for the petitioner herein to submit copies of the judgment and decree dated 27.06.2003 in O.S.No.220/2002, on the file of the Court of Additional District Munsif at Cuddalore and by way of reply dated 29.01.2021, sent by registered post with acknowledgment due, the said documents have been filed along with the photographs of the plaint in O.S.No.311/2017, filed by S.Singaravelu as well as representation submitted by the 1st respondent Municipality as well as writ petitioner, who has also arrayed as one of the defendant. A perusal of the impugned notice would prima facie disclose that the reply dated 20.01.2021, have not even been adverted to by the 1st respondent.

8. It is also relevant to extract Section 182 of the Tamil Nadu District Municipalities Act, 1920:

'182. Removal of encroachments .- (1) The 1 [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 or licence 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. ''

9. In the light of Sub Section 2 of Section 182, the 1st respondent is directed to take into consideration the reply dated 29.01.2021 in the form of legal notice, sent on behalf of the writ petitioner herein, after putting on notice the petitioner in W.P.NO.17585 of 2020, and also after affording an opportunity of personal hearing to the petitioner herein as well as the petitioner in W.P.No.17585/2020, namely, Mr. Jose Kamal Mores, shall dispose of the same on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order / uploading of the order in the Website and communicate the decision taken to the petitioner and till such time, the 1st respondent shall defer further decision in terms of the impugned notice.

10. The Writ Petition stands disposed of accordingly. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

sk

To

1.The Commissioner,
Cuddalore Municipality,
Bharathi Road,
Cuddalore 607 001.

2.The Town Surveyor,
Cuddalore Municipality,
Bharathi Road,
Cuddalore 607 001.

+2 ccs to Mr.D.baskar Advocate sr8576
+1 cc to the Government Pleader sr8483

rv(co)
aa08/03/2021

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