



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.04.2021**

CORAM

THE HON'BLE MR.JUSTICE T. S. SIVAGNANAM
and
THE HON'BLE MRS.JUSTICE S.ANANTHI

W.P. (MD)No.8293 of 2021

and

W.M.P. (MD)No.6277 of 2021

A.Ramakrishnan

...Petitioner

-Vs-

1.The District Collector,
Local Town Planning Authority,
Theni District,
Theni.

2.The Commissioner/Member Secretary,
Local Town Planning Authority,
Theni-Allinagaram Municipality,
Theni.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned notice in Na.Ka.No.66/2020/F1, dated 03.12.2020 issued by the 2nd respondent herein and quash the same as illegal and consequently forbear the respondents from disturbing the peaceful possession and enjoyment over his land situated in Survey No.165/1 in Ward No.32, Theni-Allinagaram Municipality and also to collect the property tax as per earlier Assessment Number in 1`25/62198 assigned by Theni-Allinagaram Municipality.

For Petitioner : Mr.A.Mithun Chakravarthi

For Respondents : Mr.A.Karthick,
Govt. Advocate for R1
Mr.K.Hema Karthikeyan for R2

ORDER

[Order of the Court was made by **T. S. SIVAGNANAM, J.,**]

Heard Mr.A.Mithun Chakravarthi, learned counsel appearing for
<https://hcservices.ecourts.gov.in/hcservices/>



the petitioner, Mr.A.Karthick, learned Government Advocate appearing for the first respondent and Mr.K.Hema Karthikeyan, learned Standing Counsel appearing for the second respondent.

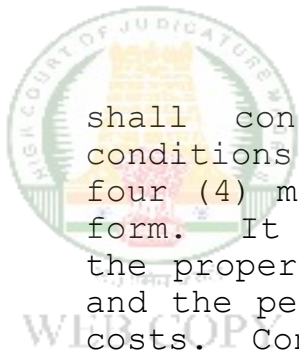
2. The petitioner has filed this Writ Petition, challenging a notice issued by the second respondent dated 03.12.2020, and for a consequential direction to restrain the respondents from disturbing his possession and enjoyment over the land in Survey No.165/1 in Ward No.32, Theni-Allinagaram Municipality and also to collect the property tax in terms of the assessment done earlier.

3. After elaborately hearing the learned counsel on either side, we find that the second respondent has assigned two reasons for issuing the impugned notice. Firstly, the petitioner has put up constructions, without obtaining building plan approval. The second is that the petitioner has encroached a land, which is classified as 'road'. The petitioner is stated to have been in the absolute possession and enjoyment of a total extent of 5 cents in the concerned survey number, having purchased the same by sale deed dated 07.09.1987, registered as document No.2468 of 1987. The petitioner would further state that unauthorizedly a road was formed in three cents of the land, leaving behind only two cents to be enjoyed by the petitioner and in this regard, the petitioner is stated to have given a complaint to the District Collector and the same is pending.

4. The learned counsel appearing for the second respondent, on instructions, would submit that at the relevant time, the petitioner did not raise any objection for formation of the road to an extent of three cents. If that is so, the second respondent, cannot state that the petitioner is an encroacher of a road. In fact, the second respondent has instructed the learned Standing Counsel that appropriate proposal has been made to show the road as a reduced length. This will go to show that there is no encroachment made by the petitioner on road or road margin.

5. With regard to the allegation of unauthorised construction is concerned, it appears that the petitioner has put up a shop for which there is no building plan approval. However, there is stated to have been a old construction much earlier and there is a property tax assessment. Even if the property has been assessed to tax earlier or even subsequently after putting up the unauthorised construction, that will not regularize the unauthorised construction. Therefore, the petitioner has to necessarily obtain permission of the second respondent.

6. In the result, this Writ Petition is allowed and the impugned order dated 03.12.2020, issued by the second respondent is set aside, with a direction to the petitioner to apply for building plan approval, within one week from the date of receipt of a copy of



shall consider the same and grant appropriate approval with conditions that may be permissible under law, within a period of four (4) months from the date of receipt of the application in full form. It goes without saying that the possession and enjoyment of the property in question by the petitioner shall not be interfered and the petitioner should not put up any further constructions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSI)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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.

vsm
To

- 1.The District Collector,
Local Town Planning Authority,
Theni District,
Theni.
 - 2.The Commissioner/Member Secretary,
Local Town Planning Authority,
Theni-Allinagaram Municipality,
Theni.
- +1 CC to M/s.SPL GP (SR-17766[F] dated 27/04/2021)

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and W.M.P. (MD)No.6277 of 2021
26.04.2021

GS (18.06.2021) 3P 4C