



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2022

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THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.9456 of 2022 and WMP.No.9199 of 2022

A.S.Sharfoon

... Petitioner

-vs-

The Commissioner,
Ranipet Municipality,
No.1 Railway Station Road,
Ranipet, Ranipet District-632 401.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Certiorari, calling for the records on the file of the respondents in proceeding in Na.Ka.No.2100/2020/C1 and quash the impugned Notice/Order dated 05.04.2022 issued under Sections 182, 188, 339(3), 340(1) and 344 of the District Municipalities Act, 1920, as illegal and violative of the principles of natural justice and law.

For Petitioner : Ms.Karthikaa Ashok

For Respondent : Mr.P.Srinivas
Standing Counsel

ORDER

(Order of the Court was made by T.RAJA, J.)

This Writ Petition has been filed by the petitioner challenging the impugned notice dated 05.04.2022 issued by the respondent herein, namely, the Commissioner, Ranipet Municipality, asking her to remove the encroachments put up in the pathway-in-question and for quashing of the same.

2. Learned Counsel appearing for the petitioner would submit that the petitioner is residing with her husband in No.29/12-B, Tiger Street, Ranipet, Ranipet District. Her children are all married and some of them are in Chennai and one daughter is in USA. It is the claim of the petitioner that the above said house property actually owned by her father Ahamed



Hussain who has settled the same in favour of the petitioner. Therefore, she has been residing in the said property right from her childhood. The revenue authorities have also mutated the revenue records in her name and taxes are also being paid for the said property periodically. After the settlement of the property by a deed of Settlement dated 24.05.1982 bearing Document No.1368/1982 on the file of the Sub-Registrar Office, Walaja, the petitioner has constructed a house and she has been in possession and enjoyment of the same uninterruptedly. There is a vacant land left on the western side of the property by her father and the same is also in absolute enjoyment and possession of the petitioner herein.

3. Learned Counsel for the petitioner would further submit that one of the family members of the neighbour in the northern side of the petitioner's property was a Councilor of the respondent Municipality and he has attempted to grab a portion having large extent of the petitioner's property. At one point of time, the said Councilor attempted to plant trees and lay road beyond the lane extent intruding into the petitioner's property. Therefore, a suit for declaration and permanent injunction not to interfere with the peaceful possession of the property-in-question has been filed and the said suit was decreed in favour of her father. Aggrieved thereby, the said Councilor and the respondent Municipality have not filed any appeal. Therefore, the said order has become final and concluded as no appeal has been preferred. After some time, the respondent Municipality also lodged a complaint against the petitioner and her husband and a case has been registered under STC.No.1843/2007 before the learned Judicial Magistrate No.II, Ranipet and finally that was ended in acquittal after elaborate trial that shows that the Municipality had no records to show that encroachment was made by the petitioner in the Tiger Street Lane.

4. Learned Counsel for the petitioner would also submit that when the petitioner is the owner of the land-in-question, the respondent has wrongly issued the impugned notice dated 05.04.2022 directing her to demolish the structure said to have been put up by her encroaching on the road. According to the petitioner, she was not given an opportunity of hearing. Therefore, the impugned order is erroneous and contrary to the true facts. Since the petitioner has initiated contempt proceedings against the respondents in Contempt Petition No.70 of 2022, as a counter blast they have issued the present impugned notice, therefore, the mala fide attitude of the respondent is liable to be set aside, she pleaded.

5. Mr.P.Srinivas, learned Standing Counsel taking notice for the respondent drawing our notice to the copy of the counter



filed by the respondent would submit that when the petitioner has filed W.P.No.8928/2020 directing the respondents therein to provide water connection to her house and also to clear the block in the public drain connected to the house of the petitioner, the petitioner also from her side encroached a portion of the public land causing hindrance to the road users. The Town Surveyor has inspected the street-in-question on 16.02.2022 and reported that the street has been encroached by various persons including the petitioner herein and also marked the extent of encroachments. Accordingly, the part of the petitioner's compound wall to the length of 40 feet frontage and an average width of 2 feet is marked as an encroachment, but the petitioner was also not permitting the Surveyor to measure her property to verify the encroachments. Moreover, when the petitioner has come to this Court asking removal of the encroachment made by others, the petitioner ought to have co-operated with the above surveyor to ascertain whether the petitioner is an encroacher or not by surveying her land. Therefore, there cannot be any justification on the part of the petitioner in non-co-operating with the Town Surveyor to survey the land-in-question to find out the encroachment.

6. At the outset, it has been found that the petitioner is also an encroacher in the passage as mentioned in the impugned notice. But the grievance of the petitioner is that when the impugned notice has been issued giving 7 days time to remove the encroachment, some more breathing time should have been given to give her reply with supportive documents to say that the petitioner as alleged by the respondent has not encroached into the pathway.

7. In view of the above, we grant two weeks' time to the petitioner to give a detailed explanation to the impugned notice dated 05.04.2022 to the respondent along with supportive documents, if any and on receipt of the said reply with documents, the respondent shall consider and pass orders on merits and then proceed further in the manner known to law, within a period of four weeks thereafter. Till then, the respondent shall maintain status quo as on today.

8. With the above observation and direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar



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To

The Commissioner,
Ranipet Municipality,
No.1 Railway Station Road,
Ranipet, Ranipet District-632 401.

+lcc to Ms.J Ashok, Advocate, S.R.No.25710

W.P.No.9456 of 2022

SR-II (CO)
CT 17/05/2022