



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

and

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.P(MD)No.12056 of 2022

and W.M.P.(MD) Nos.8570 and 8573 of 2022

Abubackar Siddiq

... Petitioner

Vs.

The Commissioner,
Karaikudi Municipality,
Karaikudi,
Sivagangai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order of eviction made by the Respondent in Na.Ka.No.1040/2022/F1, dated 18.05.2022 and quash the same.

For Petitioner

: Mr.M.Mahaboob Athiff

ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

Challenging the notice purported to have been issued under Sections 180 and 182 of the Tamil Nadu District Municipalities Act, 1920, by which, the petitioner is asked to remove the encroachment made by him in public street by putting up finished furniture and machineries within seven days from the date of receipt of a copy of this order, the above writ petition is filed.

2. Having regard to the nature of order proposed by this Court, no prior notice to the respondent is required.

3. Learned counsel for the petitioner states that the petitioner owns an extent of 7.45 cents in S.No.498/79 (Old S.No.498/35), Ward No.2, Karaikudi, Sivagangai District by virtue of sale deed dated 23.06.2012 and that when a similar attempt was made earlier to vacate his predecessor in interest, she challenged the



same in W.P.No.1078 of 2006 and the said writ petition was allowed by this Court.

4. However, that may be with regard to the land, which was purchased by the petitioner. The present notice is in respect of the portion of street viz., Azhagappan Street in Survey No.498/35, Block No.18, Ward No.2 of Karaikudi Municipality. Since the petitioner is having his business in his patta land, the encroachment might be in the public street.

5. Learned counsel for the petitioner states that without issuing show cause notice, the impugned notice was issued directing eviction of petitioner.

6. It has been settled by various High Courts and the Hon'ble Supreme Court that removal of encroachment cannot be done without issuing show cause notice and without adhering to the principles of natural justice. Further, the Hon'ble Supreme Court in **Madhav Roa Schindia v. Ramesh Jadav [(2006) 1 SCC 379]** has held that the Municipal Corporation ought to have directed to carry out a survey in the presence of the parties and identified the encroachment and unauthorized construction, if any, so that the aggrieved party can have the remedy of approaching the Civil Court. Hence, the survey and identification shall have to be done in the presence of the parties likely to be affected adversely by the action of the Municipal Corporation.

7. In the present case, without giving an opportunity of hearing to the encroacher, Section 180 and 182 of the Tamil Nadu District Municipalities Act, 1920 is invoked, which is in respect of encroachment in public road. Sections 180, 180A and 182 of District Municipalities Act, 1920 reads as follows:-

"180. Prohibition against obstructions in or over streets .-No one shall build any wall or erect any fence or other obstruction, or projection, or make any encroachment in or over any street, except as hereinafter provided.

* * *

180-A. Public streets open to all .- All streets vested in or to be vested in or maintained by a Municipal Council shall be open to persons of whatever caste or creed.

* * *

182. Removal of encroachments .- (1) The Executive Authority may, by notice, require the owner or occupier of any premises to remove or



(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."

8. In this case, admittedly, no notice was issued to the petitioner and there is no indication in the order impugned in the writ petition about the survey and demarcation of street in the presence of the petitioner and there is no indication of the extent of encroachment or the location with reference to the boundaries. Hence, there is violation of principles of natural justice. The petitioner is entitled to be heard even if he is an encroacher of the public road. In view of the above, the order impugned in the writ petition dated 18.05.2022 is liable to be quashed.

9. Accordingly, the Writ Petition is allowed and the order of eviction made by the Respondent in Na.Ka.No.1040/2022/F1, dated 18.05.2022, is quashed. However, it is open to the respondent to proceed against the petitioner afresh for removal of encroachment in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

10. Before proceeding further with the removal of encroachment, the Revenue Department has to survey the land in the presence of the petitioner and the respondent and fix/demarcate the exact encroachment made by the petitioner in the portion of the street or road. After getting the survey report from the Revenue Department, if the petitioner is found to be an encroacher, it is open to the respondent to issue show cause notice to the petitioner, calling upon him to give explanation or objection as to the removal of the encroachment and after considering the same, it is open to the respondent to proceed further for removal of encroachment, if any, and complete the same within a period of twelve weeks from the date of receipt of a copy of this order by strictly complying with the directions issued by this Court and by following the provisions viz., 180 and 182 of the Tamil Nadu District Municipalities Act, 1920 and thereafter, by resorting to Section 339 of the Tamil Nadu District Municipalities Act, 1920.



11. Since, the respondent is not heard, the Registry is directed to communicate the copy of this order to the respondent. In case this order is found to be based on misstatement of facts, it is open to the respondent to seek modification of order.

Sd/-

Assistant Registrar (CO)

WEB COPY

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

sj

To

The Commissioner,
Karaikudi Municipality,
Karaikudi,
Sivagangai District.

+1 CC to M/s.M. MAHABOOBATHIFF, Advocate (SR-26484[F] dated 17/06/2022)

W.P(MD)No.12056 of 2022
16.06.2022

RD(28.06.2022) 4P 3C