



W.P.(MD)No.16328 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.P.(MD)No.16328 of 2022
and W.M.P.(MD) No.11787 of 2022

S.Suresh Senthil Vinayagam

... Petitioner

Vs.

Madurai Corporation,
Through its Commissioner,
Anna Maligai,
Madurai.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating with the impugned notice of the respondent, signed on 13.07.2022 and quash the same as it is arbitrary and illegal and in consequence to direct the respondent to permit the petitioner to have the cement floor/ramp in the road portion to reach the petitioner's house in plot No.7, Vanamamalai Nagar, in Ward No.70, by considering his petition dated 24.06.2022.

For Petitioner

: Mr.R.Suriya Narayanan

For Respondent

: Mr.S.Vinayak
Standing Counsel

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ORDER

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

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This Writ Petition is filed challenging the impugned notice dated 13.07.2022, directing the writ petitioner to remove the encroachment in the Corporation Road without permission by constructing a ramp in an extent of 5.20 m x 4.60 m and to direct the respondent to permit the petitioner to have the cement floor/ramp in the road portion to reach the petitioner's house in plot No.7, Vanamamalai Nagar, in Ward No.70, Madurai.

2. Heard Mr.R.Suriya Narayanan, learned counsel for the petitioner and Mr.S.Vinayak, learned Standing Counsel for the respondent. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3. There is no dispute with regard to the petitioner's plot or the house put up by the petitioner in his plot. However, the impugned notice reads as if the petitioner has encroached into the Corporation Road without permission by constructing a ramp. It is admitted before this Court that there is a North – South 30 feet road in front of the house in plot No.7. The petitioner is using the



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said road to reach his house and it is admitted that the road in front of the petitioner's house is the only way through which the petitioner can have access. It is the case of the petitioner that the 30 feet road is not being maintained properly by the respondent Corporation. It is on account of the damaged condition of the road, the petitioner had raised the road by putting up some cement flooring very recently. It was on account of the construction of cement floor to make the road even, the petitioner states that he has spent money in public interest. However, the impugned notice is issued as if the petitioner has encroached in the public road.

4. Learned Standing Counsel appearing for the Corporation submitted that the impugned notice is only a show cause notice and the respondent will act only after holding enquiry.

5. From the reading of the impugned notice, it is seen that there is a positive direction to remove the encroachment within 7 days. The impugned order is therefore, an order in violation of principles of natural justice. Therefore, it is liable to be quashed on that ground.



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6. Apart from violation of principles of natural justice, this Court is of the view that the respondents have proceeded to consider the cement platform as an encroachment by petitioner. From the photographs shown before this Court, we are of the view that the offending construction can never be considered as an obstruction to the passage or road. In a way, it only strengthen the road. The small elevation will help to use the road during rainy season. Such an work need not be termed as an encroachment as the intention of the petitioner is to help the public to use the road conveniently rather than to cause any obstruction. However, at this stage, this Court is not inclined to go further.

7. In view of the above, the impugned order is liable to be set aside for violation of principles of natural justice. Accordingly, the Writ Petition is allowed and the impugned notice dated 12.06.2020, issued by the first respondent is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

8. The photographs clearly shows that a private person has encroached the road by placing a genset obstructing the free passage of the road. By issuing show



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cause notice, the respondent shall take appropriate steps to remove the said encroachment within a period of twelve weeks from the date of receipt of a copy of this order. Even if the petitioner is found to have encroached any portion of the road, it is open to the respondent to initiate proceedings after issuing show cause notice in the manner known to law.

[S.S.S.R., J.] [S.S.Y., J.]
26.07.2022

Index : Yes / No
sj



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S.S.SUNDAR, J.

and

S.SRIMATHY, J.

sj

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