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W.P.No.3069 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2023

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.3069 of 2023

Senthilkumar

.. Petitioner

Vs

1.The Municipal Council/Appellate Authority,
Mettur Municipality,
Mettur,
Salem District.

2.The Commissioner,
Mettur Municipality,
Mettur,
Salem District.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the first respondent to dispose of the appeal filed by the petitioner on 03.11.2022 against the order passed by the second respondent in Na.Ka.No.1055/2018/F1 dated 19.09.2022 in accordance with law by giving opportunity of hearing.



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For the Petitioner : Mr.A.Sundaravadhanan

For the Respondents : Mr.L.P.Maurya
Standing Counsel

ORDER

(Order of the court was made by the Hon'ble Acting Chief Justice)

Senthilkumar, son of Ramasamy, a resident of Thangamapuripattinum, Mettur Dam R.S., Salem District, challenging the proceedings dated 19.9.2022 issued by the second respondent bearing Na.Ka.No.1055/2018/F1, has preferred an appeal before the first respondent on 3.11.2022. As the said appeal was not disposed of till date, the present writ petition has been filed to direct the first respondent to dispose of the appeal within a stipulated time.

2. A bare perusal of the notice dated 19.9.2022 shows that it has been issued by the second respondent under Section 182 of the Tamil Nadu District Municipalities Act, 1920, which reads as under:

"182. Removal of encroachments .— (1) The 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



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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."

The provision aforesaid only contemplates issuance of a notice requiring the owner or occupier of any premises to remove or alter the encroachment. There is no provision to file an appeal against the said notice issued by the second respondent. Therefore, the prayer of the petitioner to direct the first respondent to consider his appeal dated 3.11.2022 is rejected.

3. That apart, it is seen that the notice dated 19.9.2022 has been issued by the second respondent pursuant to the order dated 21.6.2018 passed by this court in W.P.No.14990 of 2018. Therefore,



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there is no illegality in the issuance of the proceedings dated 19.9.2022.

4. Moreover, the land in T.S.No.109 has been classified as “Municipal Road” in the revenue records. Therefore, in our considered opinion, the second respondent was justified in directing removal of the encroachment, as the petitioner has no right to encroach the municipal road.

The writ petition is devoid of merits and is, accordingly, dismissed. There will be no order as to costs. Consequently, W.M.P.No.3147 of 2023 is closed.

(T.R., ACJ.) (D.B.C., J.)
06.02.2023

Index : No
Neutral Citation : No
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To:

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THE HON'BLE ACTING CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.

(sasi)

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06.02.2023