



W.P.(MD)No.20783 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.20783 of 2014
and
M.P.(MD)Nos.1 and 2 of 2014

Murugaiah

... Petitioner

versus

The Commissioner,
Kadayanallur Municipality,
Kadayanallur,
Tenkasi Taluk,
Tirunelveli District.

... Respondent

Writ Petitions filed under Article 226 of the Constitution of India, seeking for the issuance of writ of Certiorari, to call for the records relating to the proceedings of the impugned Notice in Na.Ka.No.4584/2014/F1 dated 04.12.2014 on the file of the respondent and quash the same.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondent : Mr.J.K.Jayaseelan,
Government Advocate



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ORDER

This writ petition is filed as against the notice issued under Section 182 of the Tamil Nadu District Municipalities Act, 1920, by the respondent/the Commissioner, Kadayanallur Municipality, Tenkasi Taluk, dated 04.12.2014. The respondent Municipality has issued the impugned notice as if the petitioner has put up a construction by encroaching road margins and directed him to remove the encroachment within 14 days. As against the same, the petitioner has preferred this writ petition.

2. The learned counsel appearing for the petitioner submits that this writ petition is pertaining to removal of encroachment and therefore, it has to be listed only before the First Division Bench of this Court.

3. The learned Government Advocate appearing for the



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respondent submits that it is only a notice issued under Section 182 of the Tamil Nadu District Municipalities Act, 1920 and the petitioner can very well appear before the respondent and explain as to whether he has encroached road margins or not.

4. This Court considered the rival submissions made and also perused the materials placed on record.

5. The respondent Municipality has issued the impugned notice under Section 182 of the Tamil Nadu District Municipalities Act, 1920, as if the petitioner has put up some constructions by encroaching road margins.

6. Section 182 of the Tamil Nadu District Municipalities Act, 1920 is extracted as under:

“182. Removal of Encroachments:

(1) The executive authority may by notice require



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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 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 persons who suffers damage by the removal or alteration of the same.”

7. The petitioner himself has admitted that the width of the street is only 12 feet and some houses are constructed encroaching into the street and as his house has become old, he constructed the front wall by demolishing the old one with a stair case to go the first floor and the



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wall is constructed over the same foundation, which is in existence for more than 20 years. The petitioner further states that one Pandian repeatedly gave complaints against him and pressurized the Municipality by filing a writ petition in W.P.(MD)No.19305 of 2014 before this Court seeking direction for initiating action against him. Pursuant to the direction of this Court, the impugned notice has been issued.

8. The respondent has issued the impugned notice calling upon the petitioner to remove the encroachment. Now, the grievance of the petitioner is that he has not encroached any road margin and others have encroached the road margins.

9. Though the learned counsel for the petitioner has raised certain objections that since the matter is pertaining to removal of encroachment, it has to be listed only before the First Division Bench, considering the fact that the writ petition filed challenging the notice



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dated 04.12.2014 is kept pending without any progress for the past 9 years, this Court is inclined to dispose of the writ petition by issuing certain directions to the respondent.

10. Accordingly, the writ petition is disposed of by directing the respondent Municipality to conduct a survey in the presence of the petitioner and also to identify, if any buildings are constructed by encroaching the road margins and shall proceed by removing the encroachments, after providing sufficient opportunities to the concerned parties. The respondent Municipality is also directed to complete the process of measurement and further course of action, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

21.03.2023

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NCC : Yes / No.



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Index : Yes / No.
Internet : Yes / No.

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Kadayanallur Municipality,
Kadayanallur,
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Tirunelveli District.



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B.PUGALENDHI, J.

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