



W.P.(MD) No.2440 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.2440 of 2024

and

W.M.P.(MD)No.2453 of 2024

E.Muralimanohar

... Petitioner

-Vs-

1.The Commissioner,
Madurai Corporation,
Madurai.

2.The Assistant Commissioner,
Zone-V (West),
Madurai Corporation,
Madurai.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the impugned order passed by the second respondent in his proceedings No.5101/007722/23 dated 29.01.2024 and quash the same as illegal.

For Petitioner
For R1 to R3

: Mr.C.Mayilvahana Rajendran
: Mr.S.Vinayak
Standing Counsel

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ORDER

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[Order of the Court was made by D.KRISHNAKUMAR, J.]

The petitioner has filed this writ petition challenging the order passed by the second respondent dated 29.01.2024 directing the petitioner to remove the encroachment in the petition mentioned property.

2.Mr.S.Vinayak, learned Standing Counsel takes notice for the respondents. By consent of both parties, this writ petition is taken up for final disposal at the time of admission itself.

3.The learned counsel for the petitioner submitted that the petitioner had purchased the land in S.No.299/A4, Palanganatham Village, Madurai by way of a registered sale document dated 18.11.2020 and he is running a Vermicelli Unit there. In front of this unit in his patta land, the petitioner has constructed a toilet for the usage of his employee. However, the respondent corporation claiming that this property belongs to the corporation, issued a notice to the petitioner to remove the said encroachment. The said notice was challenged in W.P.(MD)No.29179 of 2023 before this Court and the same was disposed of



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directing the respondent to take action in accordance with law. Thereafter, the present impugned order has been passed even without conducting any survey and without even issuing notice to the petitioner, violating the orders of this Court dated 12.12.2023.

4.The learned counsel for the petitioner further states that the second respondent is not the competent authority to issue the notice impugned in this writ petition. Under Section 128 of the Tamil Nadu Urban Local Bodies Act, 1998, only the first respondent is empowered to remove the encroachment, if any. However, in the present case, the first respondent in violation of the Rules in force, has issued the impugned order. Hence, the petitioner is constrained to file this writ petition.

5.The learned counsel for the respondent has produced the survey sketch of the Surveyor before this Court to show that the petitioner has encroached upon the public road and constructed a building/toilet in the said place. In the revenue records, the property in question is classified as 'road'. Therefore, notice was served on the petitioner to remove the said construction from the public street by following due process of law. Further, he has produced



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the proceedings of the Commissioner of Madurai Corporation in No.E4/015084/2023 dated 14.12.2023 to show that the Corporation has given delegation of power to the Assistant Commissioners in charge of all zones for their respective zones of Madurai Corporation under Section 57 of the Tamil Nadu Local Bodies Act, 1998. Therefore, the notice issued by the second respondent is not bad in the eye of law.

6.Admittedly, the property in question is classified as road in the revenue records. The petitioner cannot encroach upon the public road by constructing a building illegally. Encroachment in a road would affect the public at large. Hence, we are not inclined to entertain this writ petition. Accordingly, this writ petition is dismissed.

7.At this juncture, the learned counsel for the petitioner by stating that the said bathroom/toilet is now in use of his labours, requested this Court to grant two months time to vacate the said premises and hand over the possession to the respondent corporation.



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8.Considering the request made by the petitioner, two months time is granted to the petitioner to vacate the property in question. The petitioner shall hand over the possession of the land to the respondent Corporation on or before 31.03.2024. If the petitioner failed to vacate the premises within said time limit as undertaken by him, the respondent shall proceed with the removal of encroachment without issuing any further notice. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.] & [R.V., J.]
07.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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