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W.P. No. 6989 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. No. 6989 of 2024
and
W.M.P. No. 7797 of 2024**

Y.Thamotharan

... Petitioner

-VS-

1. The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore - 641001.

2. S.Vasudevan
(R2 is impleaded vide order dated
18.03.2024 in W.M.P. No. 8371 of 2024)
Respondents

...

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, to call for the records of the Respondent herein in Na. Ka. No. 3089/2020/H1(m), dated 08.03.2024, quash the same.

For Petitioner : Mr. S.V.Karthikeyan

For Respondents : Mr. N.Umapathi (for R1)

Mr. B.Nedunchezian (for R2)



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ORDER

Heard Mr. S.V.Karthikeyan, Learned Counsel for the Petitioner and Mr. N.Umapathi, Learned Counsel appearing for the First Respondent and Mr. B.Nedunchezian, Learned Counsel appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner is the owner of shops in Door Nos. 361 and 362, Range Gowder Street, Street, Coimbatore-641001 and the Second Respondent is the owner of the shops in the adjoining property at Door Nos. 357 and 358, Range Gowder Street, Coimbatore-641001, and the buildings of both properties are said to be sharing a common wall.

3. It is stated that while the Petitioner has filed the suit in O.S. No. 2896 of 2013 before the I Additional District Munsif Court, Coimbatore for permanent injunction restraining the demolition of the said common wall, the Second Respondent has filed another suit in O.S. No. 1553 of 2014 before the IV Additional District Munsif Court, Coimbatore seeking permanent injunction against the Petitioner and that both suits are pending.



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4. The Second Respondent had also filed the Writ Petition in W.P. No. 11469 of 2015 against the Corporation of Coimbatore seeking to consider his representation dated 10.03.2015 for inspecting the unapproved and dangerous building at Door No. 361, Range Gowder Street, Street, Coimbatore—641001, which was disposed by order dated 21.04.2015 holding as follows:-

4. This Court, without going into the merits of the representation submitted by the Petitioner, directs the 1st respondent, to consider the said representation dated 10.03.2015 and pass appropriate orders, after putting on notice, the owner and occupier of the premises bearing Door No. 361, Ward No.80, Rankey Gounder Street, Coimbatore -1, in accordance with law, as expeditiously as possible, in any event, not later than 4 weeks from the date of receipt of a copy of this order and communicate the decision taken to the Petitioner as well as to other persons concerned. The Writ Petition is disposed of accordingly. No costs.

In furtherance to the said order, the First Respondent pass the Order in Na. Ka. No. 11469/2014/MH-6 dated 18.04.2016, against which the Petitioner filed the Writ Petition in W.P. No. 16697 of 2016, which was disposed by order dated 17.02.2022 holding as follows:-



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3. In the impugned notice, it has been stated that the officials of the Corporation inspected the Petitioner's building on 18.4.2016, that during the course of inspection, they found that the building is in a dilapidated condition unsafe for occupation and that it will be dangerous not only to the owner and the inhabitants of the building, but also to the neighbours, which includes the Second Respondent.

4. According to the Petitioner, the impugned notice lacks *bonafides*, that it has been issued at the behest of the Second Respondent, who purchased the other portion of the property from the Petitioner's brother, that there is a dispute between the Petitioner and the Second Respondent in respect of the common wall, that the Second Respondent filed a suit in O.S. No. 1553 of 2014 on the file of the District Munsif Court, Coimbatore, in which, the Petitioner has been arrayed as the first defendant and his two brothers as defendants 2 and 3. The Second Respondent filed the said suit seeking to grant a decree for permanent injunction to restrain the defendants therein (including the



Petitioner herein) from in any manner preventing him from demolishing and reconstructing the buildings in the suit property.

5. It is submitted by the learned counsel for the Petitioner that suppressing all the facts, the Second Respondent filed W.P. No. 11469 of 2015 to dispose of his representation dated 10.3.2015 and to direct the Respondents therein to inspect the Petitioner's property alleging that it was an unapproved construction and that the building is in a dilapidated condition. It is further stated that in the said Writ Petition filed by the Second Respondent herein, the Petitioner was not impleaded as a party. Pursuant to the directions issued in the said Writ Petition in the order dated 21.4.2015, it appears that the impugned notice has been issued.

6. Though in the counter affidavit filed by the First Respondent it has been stated that an inspection was conducted by the officials of the Corporation on 18.4.2016, it is not clear as to whether any notice was issued to the Petitioner and as to whether the Petitioner's signature was obtained at the time of inspection. Considering the fact that this Writ Petition is pending from the



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year 2016, it may not be necessary for this Court to examine as to whether the enquiry conducted earlier was proper or not and such other matters, as, if any action is to be initiated against the Petitioner, the pre-requisite is a fresh inspection.

7. It is stated that the Petitioner's building is unauthorized.

8. Obviously, the building of the Second Respondent is also an unauthorized construction.

9. It is further stated that the Petitioner has got approved plan as early as 1976 and the allegation that the Petitioner's building is an unauthorized construction is false.

10. In any event, if any building or superstructure is in a dilapidated condition causing danger to the inhabitants and the neighbours, then the First Respondent is entitled to take action in accordance with the provisions of the Coimbatore City Municipal Corporation Act, 1981 and more particularly Section 327 of the said Act.



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11. In the light of the above, the Writ Petition is allowed and the impugned notice is set aside on the ground that it is in violation of the principles of natural justice. There will be a direction to the First Respondent to direct his officers to inspect the buildings of both the Petitioner as well as the Second Respondent after issuing notice to them. During the course of inspection, the Inspecting Officials shall take note of all the aspects such as stability of the buildings, type of construction and the issue as to whether the construction is as per the approved plan, etc. During the course of inspection, the Petitioner and the Second Respondent shall be present and they should not adopt dilatory tactics. After the inspection is over, if it is found that there is any violation or the building is not capable of put to continued occupation, a show cause notice shall be issued to the parties namely the Petitioner and the Second Respondent and an opportunity shall be granted to submit their objections. Along with the show cause notice, a copy of the inspection report shall be enclosed. After receipt of objections, fresh orders shall be passed by the First Respondent on merits and in accordance with law. No costs. Consequently, the



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connected WMPs are closed.

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Subsequently, the First Respondent sent a notice dated 10.08.2023 calling upon the Petitioner under Section 136 of the Tamil Nadu Urban Local Bodies Act, 1998 (hereinafter referred to as 'the TNULB Act' for short), to vacate from the building situate at Door No. 361, Range Gowder Street, Coimbatore on the ground that it is in a dilapidated condition, against which the Petitioner along with one Y.Karunakaran had filed the Writ Petition in W.P. No. 24208 of 2023, which was disposed by order dated 14.08.2023 stating as follows:-

3. The impugned order is challenged by the Petitioner mainly on the ground that the First Respondent failed to comply with the earlier directions issued by this Court in W.P. No. 16697 of 2016 wherein the First Respondent was directed to conduct a proper inspection after serving notice to the Petitioner as well as the Third Respondent herein. It is the specific case of the Petitioner that the impugned order has been passed without issuing proper notice to the Petitioner.

4. The Learned Additional Government Pleader appearing for the First Respondent submits that in view of the fact the Petitioner



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states no notice was issued to him before passing the impugned order, the order impugned in this Writ Petition may be treated as a show cause notice and the Petitioner may be directed to submit his objection within a stipulate period.

5. Earlier, when the similar order was passed by the First Respondent under the Coimbatore City Municipal Corporation Act, the Petitioner approached this Court in W.P. No. 16697 of 2016 and the said Writ Petition was allowed by setting aside the earlier impugned order by directing the First Respondent to issue notice to the Petitioner regarding date of inspection and pass orders after giving sufficient opportunity to the Petitioner to putforth his case.

6. A reading of impugned order would suggest that there is no reference about issuance of notice to the Petitioner at the time of inspection conducted by the First Respondent. Therefore, the First Respondent failed to comply with the directions issued by this Court in the earlier Writ Petition.



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7. Accordingly, as submitted by the Learned Additional Government Pleader appearing for the First respondent, the impugned order is set aside by directing the First Respondent to treat the impugned order as the show cause notice to the Petitioner. The Petitioner is directed to submit his objection, if any to the First Respondent within a period of two weeks from the date of receipt of copy of this order. On submission of the objection by the Petitioner, if the First Respondent decides to proceed further, it is for him to issue proper notice to the Petitioner as well as the Third Respondent fixing date for inspection of the property and pass appropriate orders thereafter. No costs. Consequently, the connected Miscellaneous Petition is closed.

5. According to the First Respondent, in furtherance to the aforesaid orders passed by this Court, the property was inspected on 07.03.2024 by its City Planner, who had submitted a report dated 07.03.2024 to the First Respondent and after taking the same into consideration, a fresh Order in Na. Ka. No. 3089/2020/H.1,(Ma) dated 08.03.2024 has been passed, which reads as follows:-

பார்வை:- 1. மாண்புமிகு சென்னை உயர்நீதிமன்ற வழக்கு எண்.



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24208/2023, உத்தரவு நாள். 14.08.2023.

2. நகர திட்டமிடுநர் அவர்களின் நேராய்வு நாள்

07.03.2024.

தங்களுக்கு சொந்தமான கதவு எண்கள். 361. 361/1. 362-ல் ரங்கே கௌடர் வீதியில் அமைந்துள்ள கட்டிடத்தில் 21.12.2020, 07.08.2023 மற்றும் பார்வை 1-இல் கண்ட மாண்பமை சென்னை உயர்நீதி மன்ற உத்தரவுப்படி சம்மந்தப்பட்ட கட்டிட உரிமையாளர்களுடன் மேற்படி கட்டிடம் 07.03.2024 அன்று நகர திட்டமிடுநர் கோயம்புத்தூர் மாநகராட்சி அவர்களால் நேரடி கள ஆய்வு செய்யப்பட்டது. ஆய்வின் போது மேற்படி கட்டிடம் மிகவும் பழுதடைந்து இடியும் தருவாயிலும், ஆபத்தான நிலையில் உள்ளது என கண்டறியப்பட்டது.

எனவே மேற்படி கட்டிடத்திற்கு உரிமையாளரான தாங்கள் இவ்வறிவிப்பு கிடைக்கப் பெற்ற (பதினைந்து) 15 நாட்களுக்குள் கட்டிடத்தை இடித்து அப்புறப்படுத்துமாறு நாளது தேதி வரை திருத்தியமைக்கப்பட்ட தமிழ்நாடு நகர்ப்புற உள்ளாட்சி அமைப்புகள் சட்டம் 1998-இன் பிரிவு 136(1)-இன் கீழ் அறிவிக்கப்படுகிறது.

தவறும் பட்சத்தில் 136(3)-இன் கீழ் மாநகராட்சி ஆணையாளரால் நடவடிக்கை மேற்கொள்ளப்பட்டு. மேற்படி சட்டம் பிரிவு 136(4)-இன் படி ஆகும் செலவினத்தை தங்களிடமிருந்து வசூலிக்கப்படும் என்பதையும் தெரிவித்துக் கொள்ளப்படுகிறது.



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6. Though Learned Counsel for the Petitioner raised a contention that the report dated 07.03.2024 of the City Planner, who had inspected the property, has not been furnished to the Petitioner, Learned Counsel for the First Respondent has produced its copy today before this Court, which reads as follows:-

பார்வை: 1. செயற் பொறியாளர், பொதுப்பணித்துறை, கட்டிடம் (க&ப)

கோட்டம் - கோயம்புத்தூர் அவர்களின் நேராய்வு
அறிக்கை நாள்: 28.10.2020.

2. அரசினர் பொறியியற் கல்லூரி, கோயம்புத்தூரின் கட்டிட
உறுதித்தன்மைக்கான கடிதம் நாள்: 09.05.2023.

3. W.P. No. 24209 of 2023 வழக்கில் மாண்பமை
மெட்ராஸ் உயர்நீதிமன்ற உத்தரவி நாள் 14.08.2023.

கோயம்புத்தூர் மாநகராட்சி, மத்திய மண்டலம். வார்டு எண்:81, ரங்கே
கௌடர் வீதி கதவு எண்கள்: 361, 361/1 மற்றும் 362-யில், மேற்படி மாண்பமை
மெட்ராஸ் உயர்நீதிமன்ற W.P. No. 24209 of 2023 வழக்கில் வாதிகள் 1 &
2 மற்றும் பிரதிவாதி 3-ன் கட்டிடங்கள் அமைந்துள்ளன.

பார்வை-3ல் கண்ட மாண்பமை உயர்நீதிமன்ற உத்தரவுப்படி வாதி மற்றும்



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பிரதிவாதியின் கட்டிடங்கள் வாதிகள் மற்றும் பிரதிவாதியுடன் நேராய்வு செய்யப்பட்டு கீழ்க்கண்ட அறிக்கை சமர்ப்பிக்கப்படுகிறது.

பார்வை-1ல் கண்ட செயற் பொறியாளர், பொதுப்பணித்துறை, கட்டிடம் (கஃப) கோட்டம், கோயம்புத்தூர் அவர்களின் நேராய்வு அறிக்கை நாள்: 28.10.2020-இல்,

“இக்கட்டிடத்தின் வயது மற்றும் பராமரிப்பு, அஸ்திவார கட்டுமானம் ஆகியவற்றை கருத்தில் கொண்டு இக்கட்டிடம் போதிய உறுதித் தன்மையுடன் இல்லை என தெரிவித்துக் கொள்ளப்படுகிறது.” என குறிப்பிடப்பட்டுள்ளது.

பார்வை-2ல் கண்ட அரசினர் பொறியிற் கல்லூரி, கோயம்புத்தூரின் கட்டிட உறுதித் தன்மைக்கான கடிதம் நாள்: 09.05.2023-ல் இணைக்கப்பட்டுள்ள கட்டிட உறுதித்தன்மை அறிக்கையில்,

“Structural Audit was conducted for the shop building in Rangegounder Street, Coimbatore. The Building is of RCC type. The age of the building is more than 75 years which exceeded the normal life



of an RCC building. Structural auditing of the building was done to observe the strength, quality of concrete and status of the building. The structural members and the masonry wall appears to be in very bad condition. From the detailed investigations made in the site, it is found that the structure is not fit for use; hence needs to be dismantled immediately. It is unsafe to occupants. Necessary care should be taken while demolition.”

ஏன குறிப்பிடப்பட்டுள்ளது.

இன்று (07.03.2024) மேற்படி கட்டிடங்கள் ஆய்வு செய்யப்பட்டது. வாதிகள் மற்றும் பிரதிவாதியின் கட்டிடங்கள் ஒரே காலத்தில், ஒரே நேரத்தில் ஒன்றாகக் கட்டப்பட்டவை என ஆய்வின் போது கண்டறியப்பட்டது.

பிரதிவாதியின் கட்டிடத்தின் கூரை சேதமடைந்து, கான்கிரீட் கம்பிகள் துரப்பிடித்த நிலையில் இருந்தது கண்டறியப்பட்டது.

அதன் பின் வாதிகளின் கட்டிடம் ஆய்வு செய்யப்பட்டது. இரண்டு (வாதிகள் மற்றும் பிரதிவாதி தலா - 1 கடை) கடைகளின் அகலம் சுமார் 8 அடி அகலம் மட்டுமே அமையப் பெற்றுள்ளது. எனவே, கூாதிகளின் கட்டிடத்தின்



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மேற்கூரைக்கும் அதே பாதிப்பு இருக்கக்கூடும் என கண்டறியப்பட்டது.
மேலும், பார்வை 1 மற்றும் 2-ல் கண்ட அறிக்கைகள்
ஏற்கக்கூடியவையே. எனவே மேற்படி இரண்டு கட்டிடங்களுக்கும்
திருத்தியமைக்கப்பட்ட தமிழ்நாடு நகர்ப்புற உள்ளாட்சி அமைப்புகள் சட்டம் - 1988,
பிரிவு எண் 136-ன் கீழ் அறிவிப்பு வழங்கி நடவடிக்கை மேற்கொள்ளலாம் என
அறிக்கை சமர்ப்பிக்கப்படுகிறது.

The said order is challenged in this Writ Petition.

7. It is strenuously pleaded by Learned Counsel for the Petitioner that the conclusion arrived by the First Respondent in the impugned order that the building of the Petitioner is in dilapidated condition is erroneous as according to him, it is structurally stable. It must be pointed out here that this Court in the order dated 14.08.2023 in W.P. No. 24208 of 2023 had specifically required the Petitioner to submit his objections, if any, to the show cause notice dated 10.08.2023 sent by the First Respondent and if the First Respondent decides to proceed further, inspection of the property shall be conducted after proper notice to the Petitioner and the Second Respondent and pass appropriate orders thereafter. It is not the case of the Petitioner that he has placed any objection as required by this Court in the said order and the impugned order has been passed referring to the inspection of the property conducted on 07.03.2024 by its City



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Planner. It must be recapitulated here that the Writ Court cannot substitute the decision of the adjudicatory body merely because another view is possible, and the Hon'ble Supreme Court of India in ***General Manager, Electrical Rengali Hydro Electric Project, Orissa -vs- Giridhari Sahu*** [(2019) 10 SCC 695] has explained the scope of Writ of Certiorari to interfere with an error of law apparent on the face of record, in the following words:-

28. On the conspectus of the decisions and material, we would hold as follows: the jurisdiction to issue writ of certiorari is supervisory and not appellate. The Court considering a writ application of certiorari will not don the cap of an appellate court. It will not reappreciate evidence. The writ of certiorari is intended to correct jurisdictional excesses. A writ of prohibition would issue when a tribunal or authority has not yet concluded its proceedings. Once a decision is rendered by a body amenable to certiorari jurisdiction, certiorari could be issued when a jurisdictional error is clearly established. The jurisdictional error may be from failure to observe the limits of its jurisdiction. It may arise from the procedure adopted by the body after validly assuming jurisdiction. It may act in violation of principles of



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natural justice. The body whose decision which comes under attack may decide a collateral fact which is also a jurisdictional fact and assume jurisdiction. Such a finding of fact is not immune from being interfered with by a writ of certiorari. As far as the finding of fact which is one within the jurisdiction of the court, it is ordinarily a matter “off bounds” for the writ court. This is for the reason that a body which has jurisdiction to decide the matter has the jurisdiction to decide it correctly or wrongly. It would become a mere error and that too an error of fact. However, gross it may amount to, it does not amount to an error of law. An error of law which becomes vulnerable to judicial scrutiny by way of certiorari must also be one which is apparent on the face of the record. As held by this Court in **Hari Vishnu Kamath -vs- Ahmad Ishaque** (AIR 1955 SC 233), as to what constitutes an error apparent on the face of the record, is a matter to be decided by the court on the facts of each case. A finding of fact which is not supported by any evidence would be perverse and in fact would constitute an error of law enabling the writ court to interfere. It is also to be noticed that if the overwhelming weight of the evidence does not support the finding, it would render the



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decision amenable to certiorari jurisdiction. This would be the same as a finding which is wholly unwarranted by the evidence which is what this Court has laid down **Parry & Co. Ltd. -vs- P.C. Pal** (AIR 1970 SC 1334).

Having due regard to the aforesaid legal position, inasmuch as the Petitioner has not shown any flaw in the decision-making process followed by the First Respondent while passing the impugned order, there does not appear to be any reason to differ from the conclusion arrived by the First Respondent from the materials placed on record, and this Court is not inclined to delve into disputed questions of the factual controversy raised for effectual and complete adjudication of the matter.

8. In this context, reference reference must be made to Section 136 of the TNULB Act, which is extracted below:-

136. Power to order removal of dangerous buildings, trees, etc.—(1) Where it appears to the Commissioner at any time that any building is in a ruinous condition or is in any way dangerous or unfit for human habitation or over crowding in a building, the Commissioner may, by an order in writing, require the owner or



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the occupier of such building to vacate, demolish, remove such building within the time limit specified in the said order.

(2) Where it appears to the Commissioner at any time that any tree is in a ruinous condition or is in any way dangerous condition in any area of a municipality, he may by order in writing remove the tree forthwith.

(3) Where the owner or occupier of the building does not comply with the order issued under this section, the Commissioner shall take such step in relation to the building or tree as may be necessary to prevent any occurrence of danger therefrom.

(4) All expenses incurred by the Commissioner, in relation to any building or tree under this section shall be recoverable from the owner or the occupier thereof, as the case may be, as arrears of land revenue.

It is apparent on the plain reading of Section 136 of the TNULB Act that it intends only to ensure the safety of the public on account of the ruinous



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condition of a dilapidated building and cannot be adopted as a ruse to circumvent the adjudication of the private dispute between the parties by the Civil Court. This would obviously mean that inasmuch as the Petitioner and the Second Respondent have already filed suits against each other, their outcome would have to be awaited, and the First Respondent, by virtue of the impugned order, is merely entitled to take imminent measures to ensure public safety by preventing any person from entering into the building or taking any other required action in the manner provided by law and such action taken by the First Respondent cannot be meant to enable the Second Respondent to indirectly defeat the rights of the Petitioner over his property without recourse to law.

9. At the same time, it is evident that the subject-matter of the suit in O.S. No. 2896 of 2013 filed by the Petitioner before the I Additional District Munsif Court, Coimbatore and the suit in O.S. No. 1553 of 2014 filed by the Second Respondent before the IV Additional District Munsif Court, Coimbatore, are so inextricably connected with each other that the grant of the relief claimed in one suit has to necessarily result in denial of the relief in the other, meaning thereby that there may be possibility of conflicting decrees coming into existence if they are tried separately. In other words, there is substantial identity of the parties in



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the two suits *viz-a-viz* the issues arising for decision, which are complimentary to each other requiring avoidance of duplication of oral and documentary evidence for ensuring convenience to the contesting parties, apart from saving precious judicial time. In such circumstances, it is expedient for the ends of justice that the two suits have to be heard and tried together in the same court, and failure in to do so may result in gross injustice to the parties leading to legal complications. Viewed from that perspective, this Court, in exercise of *suo motu* powers conferred by Section 24 of the Code of Civil Procedure, 1908, transfers the suit in O.S. No. 1553 of 2014 from the file of the IV Additional District Munsif Court, Coimbatore to the file of the I Additional District Munsif Court, Coimbatore, to be consolidated for the purpose of trial along with the earlier suit in O.S. No. 2896 of 2013 on the file of the same Court, uninhibited and uninfluenced by the impugned order passed by the First Respondent. The parties shall appear before that Court on the next date of hearing, which is fixed as 19.06.2024, for conduct of further proceedings from their present stage, and on the subsequent dates to which they are adjourned, from time to time and it shall be ensured by the I Additional District Munsif Court, Coimbatore that there is atleast one effective hearing every week showing progress of the cases and monthly reports in that regard are sent to the Registrar (Judicial) of this Court till they are finally disposed.



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Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 31.05.2024.

Maya

To

The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore – 641001.

Copy to

1. The Registrar (Judicial),
Madras High Court,
Chennai – 600104.
2. Y.Thamotharan,
S/o. Yoganathan,
Sri Annam Stores,
Door Nos. 361 and 362, Rangae Gowder Street,
Coimbatore – 641001.
3. S.Vasudevan,
S/o. Sugirtha Pandian,
Nos. 357 and 358, Rankay Koudar Street,
Coimbatore – 641001.
4. I Additional District Munsif Court,
Coimbatore.
5. IV Additional District Munsif Court,
Coimbatore.



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P.D. AUDIKESAVALU, J.

Maya

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18.03.2024

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