



WP.No.23328 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 26.09.2024

PRONOUNCED ON : 19.10.2024

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNA KUMAR

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

WP.No.23328 of 2024
and WMP.Nos.25479 & 25480 of 2024

Mumtaj

.. Petitioner

v.

1.The District Collector
State Bank Road,
Gopalapuram, Coimbatore – 641 018.

2.The Commissioner,
The Coimbatore City Municipal Corporation
Coimbatore – 641 001.

3.Town Planning Officer,
Coimbatore – South
O/o.Coimbatore Corporation
Coimbatore – 641 001.

4.The Assistant Town Planning Officer,
Coimbatore – South
O/o.Coimbatore Corporation
Coimbatore – 641 001.



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5.The Tahsildar
O/o.Thasildar
Coimbatore South, Gopalapuram
Coimbatore – 641018.

6.The Taluk surveyor
Ward No.86, South Zone
Coimbatore District.

7.Jayalakshmi

8.Abdul Rahman

9.Abbas ... respondents

Prayer : Petition filed under Section 226 of the Constitution of India seeking of writ of certiorarified Mandamus, calling for the records relating to the impugned order in Na.Ka.No.9424/2023/H1/South dated 23.07.2024 passed by the 2nd respondent and quash the same and futher forbear the respondents from interfering with the petitioner's possession with respect to the property mentioned in the schedule hereunder.

For Petitioner : Mr.T.Mohan, Senior Counsel
for Mr.I.Abrar Mohammed Abdullah

For Respondents : Mr.A.Edwin Prabakar, Spl.GP
for RR1, 3 to 6.



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transportation and caused threats to public hygiene and the encroachment has to be removed within 7 days from the date of receipt of the said notice.

3. According to the petitioner, the said notice was issued to the petitioner and her sister at the instigation of the adjacent owners viz., 8th respondent, Mohammed Ali and Sadhick.. On 10.01.2024, the petitioner and her sister submitted their reply to the notice dated 03.01.2024. It is further stated that assailing the aforesaid notice dated 03.01.2024, the petitioner filed WP.No.1057 of 2024. This Court by an order dated 12.01.2024 disposed of the said writ petition holding that before passing the final order, the authority concerned should consider the reply filed by the petitioner, on its own merits and in accordance with law.

4. It is further stated that when the surveyor had visited the property, the petitioner requested to measure the property to find out if there is any encroachment. However, the surveyor failed to do so and without taking any steps to measure the property, the surveyor informed the petitioner that orders will be passed by the 3rd respondent. The 2nd respondent without appreciating the documents and revenue records



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submitted by the petitioner and without directing the respondents 3 to 6 to measure the property, had rendered a findings that the petitioner and her sister have made constructions encroaching on the vaikkal situated in TS.No.84, 87, 90 without any substantial proof for encroachment. Hence, the present writ petition.

5. The learned senior counsel appearing for the petitioner would submit that the impugned order has been passed without following the principles of natural justice and the procedure followed by the respondent authorities is far removed from the course mandated under the provisions of the Tamil Nadu Urban Local Bodies Act, 1988. The impugned order has been passed without taking into consideration the material records submitted by the petitioner in support of her claim that there is no encroachment made by the petitioner.

6. The learned senior counsel would further submit that the 2nd respondent ought to have seen the vaikkal shown as one of the boundaries of the petitioner's property even at the time of purchase of the property and the said “vaikkal” was never in existence. even from the date of purchase. Further, the second respondent should have noticed that there



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is no vaikkal in existence in TS.No.84, 87 and 90 as alleged or no hindrance has been caused by the petitioner's building and there is no complaint from the public regarding the alleged encroachment.

7. The learned State Government Pleader appearing for the respondents 1, 3 to 6 on instructions submitted that the finding encroachment on the vaikkal, the impugned order has been passed by the 2nd respondent for removing the encroachment by the petitioner herself, failing which it has been stated that the Corporation authorities would remove the encroachment and recover the cost incurred for the said purpose from the petitioner. Since, the revenue records reveal that there is encroachment to the existence of 140sq.m in TS.No.84, 100sq.m in TS.No.87 and 240sq.m in TS.No.90 and hence the impugned order has been passed by the 2nd respondent. Further, he would submit that survey was conducted in the presence of the petitioner and the encroachment was identified and therefore, the contention that there is violation of principles of natural justice will not stand.

8. We have considered the rival submissions made on both sides and perused the materials available on record.



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9. It is seen from records, that the present writ petition is a second round of litigation, earlier, when the Town Planning Officer of Coimbatore Corporation issued notice dated 03.01.2024, the petitioner has filed WP.No.1057 of 2024, this Court upon hearing the learned counsel for the petitioner and the learned State Government Pleader passed the following Order :-

“Heard Mr.I.Abrar Md. Abdullah, learned counsel for the petitioner and Mr.P.Muthukumar, learned State Government Pleader for the respondents.

2. The petitioner is issued with the notice under Section 128(1)(b) of the Tamil Nadu Urban Local Bodies Act, 1998. The petitioner has filed a reply to the same.

3. Naturally, the concerned authority, before passing the final order, shall consider the reply filed by the petitioner on its own merits and in accordance with law.

4. In light of the above, the writ petition stands disposed of. There shall be no order as to costs.



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Consequently, W.M.P.No.1116 of 2024 is closed.”

10. It is seen from records that pursuant to the order dated 12.01.2024 made in WP.1057 of 2024, the 2nd respondent had conducted enquiry on 27.06.2024 and in the said enquiry, the petitioner's son appeared and submitted his explanation. On 02.07.2024, the petitioner and her sister made a request to the respondents 3 and 4 herein to measure the property. The property was measured by the Tahsildar along with the Corporation officials in the presence of the petitioner. The presence of the petitioner during measurement is clear from the written instructions dated 31.08.2024 produced by the learned State Government Pleader, in the written instructions dated 31.08.2024, it has been stated as under :-

“In obedience to the above order dated 12.01.2024, the 2nd respondent conducted an enquiry as the petitioner was sick, her son appeared for the enquiry on 27.06.2024 and their submitted their explanation. With reference to the survey records the boundaries of the said “vaikkal” were fixed and shown to the petitioner by the Corporation Officials thus an extent of 140 sq.mt in TS.No.84, an extent of 100sq.mts



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in TS.No.87 and an extent of 240sq.mt in TS.No.90 was identified and the petitioner's encroachment only the “Vaikkal” Porambokku land was confirmed in the presence of the petitioner. After confirming the petitioners encroachment only the subject land, the 2nd respondent has issued order in Na.Ka.No.9424/2023/H1/South dated 25.07.2024 with instruction to the petitioner to vacate the above encroachment by themselves within 7 days and on future the Corporation authorities would remove the encroachment and the cost would be collected from the petitioners. This order has been challenged by the petitioners in this WP.No.23328 of 2024 and it has no merits.”

11. On a perusal of the written instructions and the sketch, it is clear that the “vaikkal” is in existence in TS.No.84, 87 and 90 and the superstructure is constructed in the “vaikkal”. It is seen from the records that the vaikkal in question has been measured by the officials of the Corporation and the Tahsildar in the presence of the petitioner and it is in



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confirmed that encroachment is in the form of a superstructure put up by the petitioner subsists on the said “vaikkal”. The petitioner cannot contend that she has not encroached upon the “vaikkal” and before issuing the enquiry order, no enquiry or survey has been conducted. Having participated in the survey and faced with an adverse order, the petitioner cannot now say that she has not encroached on the “vaikkal”. There is no reason to disbelieve the instructions and sketch submitted by the respondent authorities.

12. It is relevant to extract the Article 300-A of the Constitution of India.

“300-A. Persons not to be deprived of property save by authority of law :- No person shall be deprived of his property save by authority of law.”

13. It is also pertinent to refer judgement of the Division Bench of this Court in **WP.No.13666 of 2022 etc batch dated 07.07.2022** in the case of **M.Surya v. The Section Officer, Water Resources Department, Redhills Irrigation Division, Redhills, Chennai - 600 052 and another**. The relevant paragraphs are reproduced hereunder :-



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“17. The water bodies play a significant role in maintaining the ecology and environment, besides being a source of drinking water. Usage of land earmarked as waterbody for any other purpose would be detrimental to the society at large, as the State at times suffers drought and in contrast floods because water cannot accumulate on account of encroachments on the waterbodies/water tanks, therefore, flows and results in waste of water and at times results in floods.

18. The Apex Court in the case of Jagpal Singh v. State of Punjab, (2011) 11 SCC 396 held as under:

"19. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in, etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rainwater harvesting methods, which served them for thousands of years.



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20. Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country. Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so-called auctions is not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop."

[emphasis supplied]

The Apex Court has appreciated the ancestors who could foresee the value of water which is essentially required by everyone on the earth. The Apex Court in the case of Jagpal Singh (supra) had further observed that encroachments made by few greedy people on



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ponds contributed to water shortage in the country.

Therefore, we need to give sanctity to the subject.”

14. This Court has time and again held that encroachment on water bodies which are essential sources of water for communities and eco-system forces a significant threat to the sustainability on the environment and infact directed the authorities to take stringent action to address this issue before it exacerbates into a full blown crisis. Despite the categoric findings of the respondent authorities that the petitioner has encroached upon the “vaikkal”, we cannot permit the existence of the encroachment on the water bodies, any encroachment on the water bodies has to be removed. It is the high time the authorities to implement the provisions of law in stricto sensu.

15. For the forgoing reasons, the writ petition is dismissed, the authorities are directed to proceed in furtherance of the impugned order in accordance with law. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(D.K.K.J.)

(M.J.R.J)



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Index : Yes/No
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Speaking Order/Non Speaking Order
Neutral Citation : Yes/No
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