

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2015

CORAM

THE HON'BLE Mr. JUSTICE SATISH K.AGNIHOTRI
and
THE HON'BLE Dr. JUSTICE P.DEVADASS

W.P.Nos.34965 of 2015
and
M.P.Nos.1 and 2 of 2015

S.Ramesh Kumar

... Petitioner

Vs.

1. The Commissioner,
Coimbatore City Municipal
Corporation,
Coimbatore - 641 012.
2. The Member Secretary,
Coimbatore Local Planning
Authority,
Coimbatore - 641 012.
3. The Executive Engineer (Planning)
(Town Planning Officer)
Coimbatore Corporation
Coimbatore - 641 001.
4. The Assistant Executive
Engineer (Planning),
(Asst. Town Planning Officer),
Coimbatore Corporation,
Coimbatore - 641 001.
5. Full Gospel Pentecostal Church
rep. by its District Pastor
J.David William

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus to direct the respondents 1 to 4 to demolish the unauthorised construction put up by the fifth respondent in the property bearing Door No.12, Valluvar Street, Sivananda Colony, comprised in T.S.No.1617, Block No.43, Ward No.K(11), Tatabad, Coimbatore on the basis of interim report dated 25.08.2015 made under Sections 282(1) & (2) and 296 (1) & (2) of Coimbatore City Municipal Corporation Act 1981 and the final order dated 28.09.2015 passed under Sections 282(3) and 296(3) of Coimbatore City Municipal Corporation Act, 1981.

For Petitioner : Mr.R.Bharath Kumar

For Respondents : Mr.D.Krishnakumar
for R1, R3 and R4
Mr.P.S.Sivashanmugha Sundaram,
Spl. Govt. Pleader for R2
Mr.M.Sundar
for Mr.K.Ashok Kumar for R5

ORDER

(Order of the Court was made by SATISH K.AGNIHOTRI, J.)

With the consent of the learned counsel for the parties, the writ petition is taken up for final disposal.

2.The petitioner, who is stated to be a resident of Door No.12, Valluvar Street, Sivananda Colony, Coimbatore, has filed the instant writ petition for a writ of mandamus, directing respondents 1 to 4 to demolish the unauthorised construction put up by the fifth respondent in the property bearing Door No.12, Valluvar Street, Sivananda Colony, comprised in T.S.No.1617, Block No.43, Ward No.K(11), Tatabad, Coimbatore on the basis of interim report dated 25 August 2015 made under Sections 282 (1) & (2) and 296 (1) & (2) of Coimbatore City Municipal Corporation Act 1981 and the final order dated 28 September 2015 passed under Sections 282(3) and 296(3) of Coimbatore City Municipal Corporation Act, 1981.

3.On notice, the first respondent Corporation has filed the report dated 10 December 2015, stating the deviations and also the consequential action initiated by the authorities as under:

"For these deviations the notices under Coimbatore City Municipal Corporation Act, 1981, Sections 282(1), (2), 282(3), 274(1) & 284 has been given to the building owner and the owner of the building was directed to stop the work. At present the construction work has been stopped completely. Subsequently the owner of the building has communicated to the Corporation on 26.11.2015 that he has filed an appeal to the Government of Tamil Nadu challenging the notice issued under Section 282(3) and 296(3)."

4.The fifth respondent also filed a counter affidavit stating that the fifth respondent has a statutory remedy of appeal before the Standing Committee and it has also preferred an appeal on 01 December 2015 in Appeal Diary No.1158 of 2015 under the provisions of Section 452 of the Coimbatore City Municipal Corporation Act (for short 'the Act').

5.We have perused the pleadings and the documents appended therein.

6.It is seen that the notice has been issued under the provisions of Section 282(3) r/w 296(3) of the Act, which is appealable under the provisions of Section 452 of the Act. In view of the fact of filing of appeal against the notice, nothing survives for adjudication on merits.

7.Accordingly, we dispose of the writ petition with a direction to the appellate authority to decide the appeal as expeditiously as possible. However, regard being had to the allegations, we direct that the fifth respondent shall not continue with any construction till the disposal of the appeal by the appellate authority. The appellate authority shall ensure that no construction is undertaken in the meantime. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
Coimbatore City Municipal
Corporation,
Coimbatore - 641 012.
2. The Member Secretary,
Coimbatore Local Planning
Authority,
Coimbatore - 641 012.
3. The Executive Engineer
(Planning)
(Town Planning Officer)
Coimbatore Corporation
Coimbatore - 641 001.
4. The Assistant Executive
Engineer (Planning),
(Asst. Town Planning Officer),
Coimbatore Corporation,
Coimbatore - 641 001.

+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No.69063
+1cc to Mr.D.Krishnakumar, Advocate, S.R.No.68392
+1cc to Mr.K.Ashok Kumar, Advocate, S.R.No.68362

W.P.No.34965 of 2015

RSI (CO)
CA(11/01/2016)

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