

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2016

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.40164 of 2015 &
M.P.No.1 of 2015

1 Saraswathi

2 Uma Maheswari [PETITIONERS]

Vs

1 The Commissioner
Coimbatore Municipal Corporation
Coimbatore

2 The Member Secretary
Local Planning Authority
Coimbatore

3 The Deputy Director of Town and
Country Planning
Coimbatore

4 The Inspector of Police (Law and Order)
B 4 Police Station
Coimbatore

5 A.Venkatachalam [RESPONDENTS]

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of Mandamus, to direct the respondents 1 to 4 forthwith restore the private road as approved by the 1st respondent on 22.2.1985 in Approval No. 32798/83/H5, running north south from Race Course Road to the petitioners property to its position prior to 3.12.2015.

For Petitioners : Mrs.P.T.Asha
for M/s Sarvabhauman Asso.

For Respondents :Mr.K.Magesh - R1
Mr.R.Vijayakumar - R2 to R4
Addl.Govt. Pleader
Mr.C.Prabakaran - R5

O R D E R

Heard Mrs.P.T.Asha, learned Counsel appearing for the petitioners, Mr.K.Magesh, learned counsel appearing for the first respondent, Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondents 2 to 4 and Mr.C.Prabakaran, learned counsel appearing for the fifth respondent and with their consent the Writ Petition is taken up for final disposal.

2.The petitioner has filed this Writ Petition, praying for issuance of a writ of mandamus to forthwith restore the private road as approved by the 1st respondent on 22.2.1985 in Approval No. 32798/83/H5, running north south from Race Course Road to the petitioners' property to its position prior to 3.12.2015.

3.The problem arose between the petitioners and the fifth respondent in respect of the right to usage of a road. The petitioners claim their right in the private road, and in that regard they have also placed reliance on the plan approved by the first respondent. However, it appears that at the behest of the fifth respondent, Coimbatore Municipal Corporation has demolished the portion of the compound wall on the western side and that has prompted the petitioners to approach this Court.

4.It is relevant to point out that even in 2014, the fifth respondent has approached the Civil Court by filing the Suit in O.S.No.47 of 2014, on the file of the Principal District Munsif Court, Coimbatore. The fifth respondent is the plaintiff in the Suit. However, out of the first four defendants, two persons have been exonerated (as mentioned in the copy of the Plaint filed in the typed set of papers). The fifth defendant is the Coimbatore Masonic Charitable Trust, Coimbatore, the 6th defendant is the Commissioner of Coimbatore Municipal Corporation, the 7th defendant is the Member Secretary, Local Planning Authority, Coimbatore, 8th defendant is the Deputy Director of Town and Country Planning, Coimbatore and the 9th defendant is the Inspector of Police, B-4, Race Course Police Station, Coimbatore District.

5.The relief sought for in the Suit is for a decree of permanent injunction to restrain the defendants 1 to 5 and 9 from preventing the plaintiff from using the Plaint 'B' schedule property as a public road; for directing the defendants 6 to 8 viz., the Commissioner of Coimbatore Municipal Corporation and the Planning Authorities to remove the obstructions and encroachments, so far as to the width of the plaint B Schedule properties and restore the same to its original width of 30 ft.

6. Admittedly, the Suit is pending and it appears that no interim order is granted as on date. There is no record to show that the official defendants had filed any written statement. That apart, there is no written order passed by the Commissioner of Coimbatore Municipal Corporation, pursuant to which the compound wall was demolished and it has been in existence much prior to the institution of the Suit. There is an allegation that the Inspector of Police, B-4 Race Course Police Station is said to have acted at the behest of the defendants 1 & 2 namely R.Vijaya Krishna & K.V.Ramachandran, and presumably for such reason, the said Inspector of Police has been made as 9th defendant in the Suit. Now the allegation is against the officials of the Corporation. It is stated that the officials had over seen the demolition process and when the petitioners objected, they were threatened with prosecution stating that they were attempting to obstruct the Government Officials in discharging their duties. In the absence of any order by the Commissioner of Corporation of Chennai, pursuant to demolish the compound wall, the action of demolition has to be necessarily to be held to be without sanction of law. Even assuming that the fifth respondent had approached the Corporation to declare it as a public road, the matter should have been adjudicated by the Commissioner of the Coimbatore Municipal Corporation after notice to all concerned, especially the petitioners who are stated to be the owners of the property. The petitioners strongly rely upon the approved plan which prima facie shows that there is a private road leading to the property from Race Course Road. Thus, in the light of there being serious disputed questions of fact, all parties should agitate their rights in the pending Civil Suit and the official respondents should not resort to any shortcut methods.

7. In the result, the Writ Petition is disposed of by permitting the petitioners to restore the compound wall to its original position at their cost, with liberty to recover the cost from the Coimbatore Municipal Corporation, subject to the outcome of the Civil proceedings, and parties in this Writ Petition as well as the other defendants shall be bound by the decision of the Civil Court. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CS III)

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Sub Asst. Registrar

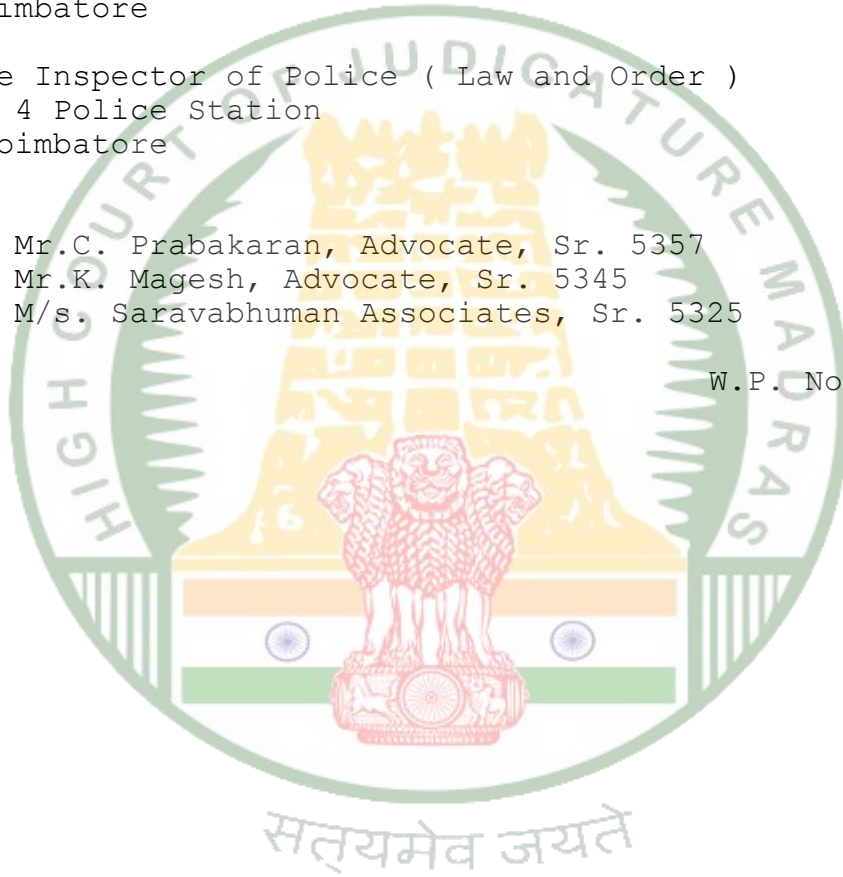
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To

- 1 The Commissioner
Coimbatore Municipal Corporation
Coimbatore
 - 2 The Member Secretary
Local Planning Authority
Coimbatore
 - 3 The Deputy Director of Town and
Country Planning
Coimbatore
 - 4 The Inspector of Police (Law and Order)
B 4 Police Station
Coimbatore
- 1 cc to Mr.C. Prabakaran, Advocate, Sr. 5357
1 cc to Mr.K. Magesh, Advocate, Sr. 5345
1 cc to M/s. Saravabhuman Associates, Sr. 5325

W.P. No.40164 of 2015

MG (CO)
kk 2/2



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