

In the High Court of Judicature at Madras

Dated : 31.03.2016

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and

The Hon'ble Mr.Justice M.VENUGOPAL

W.P.No.8203 of 2016

J.Christopher Raj

.. Petitioner

Vs.

1.The Commissioner,
Corporation of Coimbatore,
Coimbatore-641 001.

2.M.Samsulai

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus, calling for the records of the First Respondent relating to the impugned communication bearing R.O.C.No.B.L.No.47/2014/M.H./C. dated 11.02.2015 and to quash the same and direct the First Respondent to demolish the illegal construction made by the Second Respondent in his property in Town.S.Ward No.11, T.S.No.1042, S.F.No.220, Ganapathy Village, Coimbatore North Taluk, Ganapathy Sub-Registration District, Coimbatore Registration District having New Door No.82, Old No.253.

For Petitioner : Mr.I.Abra Md. Abdulla
for M/s.R.Subramanian

For Respondent-1 : Mr.K.Magesh

For Respondent-2 : Mrs.Chitra Sampath, Sr. counsel
for R.Nalliyappan

O R D E R

[Order of the Court was made by
M.VENUGOPAL, J.]

The Petitioner has preferred the present Writ Petition praying for passing of an order by this Court in calling for the records of the First Respondent/Commissioner, Corporation of Coimbatore, pertaining to his communication in R.O.C.No.B.L.No.47/2014/M.H./C. dated 11.02.2015 and to quash the same. Further, he has sought for passing of an order by

this Court in directing the First Respondent/Commissioner, Corporation of Coimbatore, to demolish the illegal construction made by the Second Respondent in his property in Town.S.Ward No.11, T.S.No.1042, S.F.No.220, Ganapathy Village, Coimbatore North Taluk, Ganapathy Sub-Registration District, Coimbatore Registration District having New Door No.82, Old No.253.

2.According to the Petitioner, he is the owner of the property situated in Survey No.11/1041/1, Gandhipuram, Coimbatore District, measuring an extent of 723 sq. feet, having purchased the same in the year 1994. Later, his wife had purchased the property in the same survey number which measures 587 sq. feet. Pursuant to the purchase of the said lands, he has constructed a house and living with his family members. In fact, the Second Respondent who had recently purchased the adjacent property had started the construction of the building by first laying a basement in the said premises, due to which his house along with the compound wall started to deteriorate and collapse.

3.The stand of the Petitioner is that fearing for the safety of his house and his family members, he started enquiring with various officials regarding the genuineness of the construction of the Second Respondent as to whether the Second Respondent had obtained building approval for putting up a construction of a ground floor and first floor. He had obtained the same by filing an application under Right to Information Act.

4.Since there was a huge damage to various places in the petitioner's property, he was constrained to send a representation to the First Respondent dated 30.12.2014 and as no action was forthcoming, he was constrained to approach this Court by means of a Writ Petition in W.P.No.3367 of 2015 which was disposed by this Court on 11.02.2015.

5.Indeed, the Petitioner made a representation to the Official Respondent to act on his representation by issuance of a legal notice dated 13.04.2015. In spite of the same, the Official Respondent in collusion with the Second Respondent had not taken effective steps which perforced him to file a Contempt Petition in Contp. No.1717 of 2015 and although the First Respondent was directed to file a status report but a proceedings in R.O.C.No.B.L.No.47/2014/M.H./C. dated 11.02.2015 was produced before this Court which is now impugned in the present Writ Petition.

6.The plea of the Petitioner is that the Second Respondent in collusion and active guidance of the Official Respondent had filed a suit in O.S.No.1767 of 2015 on the file of the learned II Additional Subordinate Judge, Coimbatore seeking a relief of bare injunction against him and the Official Respondent also.

The Second Respondent had projected the applications in I.A.Nos.892 & 893 of 2015 in the said suit and obtained an order of interim injunction on 15.12.2015 against him from parking his vehicles and other related reliefs.

7.The real grievance of the Petitioner is that there is no interim order of injunction in force against the Official Respondents as stated in the proceedings of the First Respondent dated 11.02.2015 in I.A.No.894 of 2015 and in fact, the suit itself is against the Official Respondents, which is not maintainable, inasmuch as they are performing only the statutory functions. The inspection is to be conducted in the premises in dispute, since it is endangering his life and to all his family members.

8.In response, the Learned counsel for the First Respondent submits that as per the directions issued by this Court in W.P.No.3367 of 2015 dated 11.02.2015 and W.P.No.9502 of 2015 dated 01.04.2015, the officials of the First Respondent/Commissioner, Corporation of Coimbatore, inspected the Petitioner's premises as well as the opposite parties on 25.08.2015 and issued notice to the Second Respondent in terms of Section 282 (1) (2) and 296 (1) (2) of the Coimbatore Corporation Act, 1981. Since the Second Respondent had failed to comply with the notice issued by the First Respondent/Commissioner, Corporation of Coimbatore and hence, another notice was issued warning him that suitable action would be taken by the Corporation in terms of Section 56(2A) and 57 of the Tamil Nadu Town and Country Planning Act, 1971 for keeping the premises lock and seal if the deviations are not corrected.

9.The Learned counsel for the First Respondent brings it to the notice of this Court that the Second Respondent filed O.S.No.1767 of 2015 on the file of the Learned II Additional Subordinate Judge, Coimbatore, against the Petitioner herein, First Respondent/Commissioner, Corporation of Coimbatore and the Inspector of Police, C-1 Police Station, Coimbatore seeking permanent injunction not disturbing his peaceful possession and enjoyment and an interim injunction in I.A.No.894 of 2015 dated 15.12.2015 was granted.

10.The Learned Senior counsel for the Second Respondent contends that the Petitioner had suppressed the facts that he is engaged in commercial activities such as storage of heavy steel items in the said land and doing steel oriented business. Further, the Petitioner being the adjacent land owner of the property tried to purchase the property which is under the custody of the Second Respondent from his vendor for a very low price. In fact, the Second Respondent had purchased the property for a market price from his vendor and therefore, enraged with that, the petitioner started giving pin pricks to

the Second Respondent in one manner or other.

11.The Learned Senior counsel for the Second Respondent proceeds to submit that the Petitioner (through one Selvasingh, a close relative of the Petitioner) filed W.P.No.35048 of 2014 against the District Collector, Coimbatore; the Commissioner, City Municipal Corporation, Coimbatore and against him and the said matter is still pending. That apart, the Petitioner had voluntarily approached the Second Respondent and informed that some of the floorings in the southern side of his building has been damaged but when the Second Respondent inspected the property, no damage was caused and the Petitioner being his neighbour, in order to maintain cordial relationship, the Second Respondent gave him Rs.28,000/- as per his wish.

12.It is the stand of the Second Respondent that the Petitioner had filed a suit in O.S.No.2118 of 2015 and I.A.No.3038 of 2015 on the file of the learned I Additional District Munsif, Coimbatore against the First Respondent/Commissioner, Corporation of Coimbatore; Assistant Engineer, Tamil Nadu Electricity Board and against him.

13.Continuing further, the Learned counsel for the Second Respondent submits a representation to the First Respondent/Commissioner, Corporation of Coimbatore to consider his deviation plan relating to the construction of his house. Since the First Respondent showed deaf ears, he had filed W.P.No.9502 of 2015 before this Court and this Court on 01.04.2015 had passed an order, directing the First Respondent to consider his representation within a period of two months from the date of receipt of the copy of the order.

14.It is represented on behalf of the Second Respondent that even after the grant of injunction in I.A.No.1767 of 2015 on the file of the trial Court, the Petitioner never stopped the illegal activities and he is still continuing his unlawful activities. Also, before the trial Court, a contempt proceedings is pending against the Petitioner for not obeying the order passed in I.A.No.893 of 2015. Apart from that, in the application I.A.No.3038 of 2015 filed by the Petitioner in O.S.No.2118 of 2015, no interim injunction was granted.

15.It is not in dispute that the Second Respondent had filed the suit in O.S.No.1767 of 2015 on the file of the Learned II Additional Sub Judge, Coimbatore against the Petitioner, the First Respondent/Commissioner, Corporation of Coimbatore and the Inspector of Police, C-1 Police Station, Coimbatore. The fact of the matter is that in I.A.No.893 of 2015 in O.S.No.1767 of 2015 (filed by the Second Respondent, an interim injunction was granted on 15.12.2015 against the First Respondent therein (Writ Petitioner) in respect of A Schedule Property or the B Schedule Property. Also in I.A.No.894 of 2015 in O.S.No.1767 of 2015

(filed by the Second Respondent as the Petitioner/Plaintiff) as against the Petitioner/First Respondent therein, a temporary injunction was granted in respect of A Schedule Property. Admittedly, the said suit is pending.

16. In this connection, this Court pertinently points out that the Writ Petitioner's wife filed a suit in O.S.No.2118 of 2015 and also I.A.No.3038 of 2015 on the file of the Learned I Additional District Munsif, Coimbatore. In the said suit, a relief was sought for permanent injunction and mandatory injunction against the First Respondent/Commissioner, Corporation of Coimbatore, Tamil Nadu Electricity Board and against the Second Respondent (Plaintiff in O.S.No.1767 of 2015 on the file of the Learned II Additional Sub Judge, Coimbatore). It transpires that no injunction was granted in I.A.No.3038 of 2015 (filed for an interim injunction) and the said suit is also pending.

17. It cannot be gainsaid that in the proceedings of the First Respondent/Commissioner, Corporation of Coimbatore dated 11.02.2015, it is wrongly mentioned that the Second Respondent (as Plaintiff) had obtained an interim injunction order dated 15.12.2015 against the First Respondent/Commissioner, Corporation of Coimbatore and the Inspector of Police (Third Respondent in I.A.Nos.893 & 894 of 2015 in O.S.No.1767 of 2015).

18. In reality, in I.A.No.893 of 2015 in O.S.No.1767 of 2015 filed by the Second Respondent as Petitioner/Plaintiff on 15.12.2015, injunction was granted against the First Respondent (Writ Petitioner) in respect of A Schedule Property or the B Schedule Property. Likewise, in I.A.No.894 of 2015 in O.S.No.1767 of 2015, an injunction was granted in respect of A Schedule Property against the First Respondent therein (Writ Petitioner before this Court).

19. Moreover, there is no interim injunction order in I.A.Nos.893 & 894 of 2015 in O.S.No.1767 of 2015 against the First Respondent/Commissioner, Corporation of Coimbatore and the Third Respondent therein (Inspector of Police, C-1 Police Station, Coimbatore in O.S.No.1767 of 2015). As such, it is crystalline clear in the proceedings of the First Respondent/Commissioner, Corporation of Coimbatore dated 11.02.2015 that a palpable error had crept in, stating that interim injunction was granted against the First Respondent/Commissioner, Corporation of Coimbatore which in reality is not so. Obviously, based on misconception, the First Respondent/Commissioner, Corporation of Coimbatore has not taken any action in respect of the representation of the Petitioner dated 30.12.2014.

20. In the light of the detailed discussions and also, this Court taking note of the respective contentions and also bearing in mind a prime fact that O.S.No.1767 of 2015 (filed by the Second Respondent) and O.S.No.2118 of 2015 (filed by the Writ Petitioner and his wife) are pending on the file of the respective trial Courts, without expressing any opinion on the merits of the matter and also not delving deep into the controversies between the parties, at this stage, this Court on balance in the interest of Justice, Fair Play, Equity, Good Conscience and even as a matter of Prudence directs the First Respondent/Commissioner, Corporation of Coimbatore to look into the representation of the Writ Petitioner dated 30.12.2014 with all earnestness and that too in a dispassionate manner and to pass a reasoned speaking orders on merits, ofcourse, after providing opportunity of hearing to the Petitioner, Second Respondent and others concerned, within a period of four weeks from the date of receipt of a copy of this order.

21. It is open to the respective parties to raise all factual and legal pleas and also to produce necessary supporting documents before the First Respondent/Commissioner, Corporation of Coimbatore at the time of consideration of the petitioner's representation dated 30.12.2014. If the respective parties submit necessary documents and supporting materials in respect of the stand taken by them, then the First Respondent/Commissioner, Corporation of Coimbatore shall take into account of the same and pass necessary orders in the subject matter in issue in accordance with law, ofcourse, within the time determined by this Court as stated supra.

22. With the aforesaid observations and directions, the Writ Petition is disposed of. Consequently, connected Miscellaneous Petitions are also closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

DP

To

The Commissioner,
Corporation of Coimbatore,
Coimbatore-641 001.

+1 cc to Mr.K.Magesh Advocate vide sr.20175
+1 cc to Mr.R.Nalliyappan Advocate sr.20276

W.P.No.8203 of 2016
and
WMP.Nos.7295 to 7297 of 2016

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