

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2017

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

W.P.No.20770 of 2017
and
W.M.P.No.21596 of 2017

R.Venkatachalam

... Petitioner

..Vs..

1. The District Collector,
Coimbatore District,
Coimbatore.
2. The Director of Town and Country Planning,
4th Floor, Chengalvarayan Building,
807, Anna Salai,
Chennai-600 002.
3. The Commissioner,
Coimbatore Corporation,
Coimbatore-641 001.
4. The Member Secretary,
Local Planning Authority,
Tatabad, Coimbatore-641 012.

... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus, forbearing the 3rd respondent from evicting the petitioner/demolishing the building bearing Door No.19/13 B, 4th Street, VNR Nagar, Vadavalli, Coimbatore, till the disposal of the petitioner's representation dated 06.02.2017.

For Petitioner : Mr.P.Saravana Sowmiyan

For Respondents : Mr.R.Vijayakumar,
Additional Government Pleader
(For RR1, 2 & 4)
Mr.J.Sathya Narayana Prasad for R3.

JUDGMENT

(Order of the Court was made by R. SUBBIAH, J.,)

By consent of both sides, the writ petition is taken up for final disposal at the admission stage itself.

2.This writ petition has been filed by the petitioner praying for issuance of a writ of mandamus, forbearing the 3rd respondent from evicting the petitioner/demolishing the building bearing Door No.19/13 B, 4th Street, VNR Nagar, Vadavalli, Coimbatore, till the disposal of the petitioner's representation dated 06.02.2017.

3-1.It is averred by the petitioner, inter alia, in the affidavit filed in support of the writ petition, that the 4th respondent by his proceedings dated 13.06.1980 granted approval for forming layout of sites in S.F.No.71/1 at Vadavalli Village, Coimbatore. The Layout Plan was approved in No.200/80 and it was named as VNR Nagar. The vendor of the petitioner viz., Periyasamy purchased 3163 sq.ft of land in the above said layout through registered sale deeds. The vendor of the petitioner applied for No Objection Certificate and the 4th respondent by proceedings dated 21.04.1992 granted No Objection for developing the site in Approved Lay out No.200/80. Thereafter, building permit was granted in Building Permission dated 25.02.1992 by the Executive Officer, Vadavalli Town Panchayat, Coimbatore. After putting up the construction as per the building plan, the Vadavalli Town Panchayat assigned Door Number to the building as 2/13 B and also assessed the building to property tax and the building was also given water connection. The said Periyasamy by registered Sale Deed dated 15.06.1992 sold a portion of the property purchased by him to an extent of 1600 sq.ft of land and building thereupon to the petitioner for valuable consideration. The petitioner also obtained permission for additional construction of the building in Building Permit No.40/97-98 dated 14.11.2002 from the Vadavalli Town Pachayat and constructed additional constructions. The building is assessed to Property tax and water charges. The Head Quarters Tahsildar has included the petitioners name in the Patta No.2894.

3-2.While so, all of a sudden, the petitioner received a notice from the 3rd respondent-Corporation captioned as under Section 258(4) and 441 of The Coimbatore City Municipal Corporation Act, 1981, stating that he has encroached the Corporation land and was asked to remove the encroachment within 15 days failing with prosecution will be launched against him under Section 441 of the Coimbatore City Municipal Corporation Act. The petitioner sent a reply dated 02.09.2013 to the notice, but the respondents failed to consider the same. But, the 3rd respondent, without considering the reply of the

petitioner, came to the property and threatened to demolish the building. Hence, earlier the petitioner had filed a writ petition in W.P.No.3412 of 2014 challenging the notice issued by the 3rd respondent. While the said writ petition was pending, another notice dated 12.02.2015 was issued to the petitioner under Section 258(4) of the Act. Immediately, the petitioner gave a representation dated 27.02.2015 informing about the pendency of the writ petition. The said writ petition was disposed of by this Court by order dated 23.01.2017 directing the petitioner to give fresh representation. Pursuant to the same, the petitioner gave another representation dated 06.02.2017 to the 3rd respondent along with all the documents. But, the petitioner's representation was not considered by the 3rd respondent. While so, the Assistant Town Planning Officer came to the subject property on 28.07.2017 at about 3.00 pm and demanded to vacate and handover the key. The said Officer came to the subject property on 29.07.2017 and 30.07.2017 also, without any order of eviction being passed by the 3rd respondent. The said Officer without following any procedure behaved in unruly and aggressive manner. However, the petitioner along with neighbours resisted the illegal attempt of eviction. The petitioner made all attempts to meet the 3rd respondent in person to explain his substantial claim in the property and the atrocities committed by his subordinate. But, all his attempt were futile and in vain. The petitioner also sent a representation on 30.07.2017 to the 3rd respondent by RPAD. Since the petitioner's representations were not considered by the 3rd respondent, the petitioner has come forward with the present writ petition.

4.The learned counsel for the petitioner submitted that already as per the directions of this Court passed in W.P.No.3412 of 2014, the petitioner has given a representation on 06.02.2017. But, the said representation was not considered till date by the 3rd respondent. While so, all of a sudden, the Assistant Town Planning Officer came to the subject property on 29.07.2017 and 30.07.2017, without any eviction order being passed by the 3rd respondent, and demanded the petitioner to vacate the premises. On the very same day ie., on 30.07.2017, the petitioner has sent a representation to the 3rd respondent through RPAD. Now, without considering the petitioner's representation, the 3rd respondent is threatening to demolish the house of the petitioner.

5.But, the learned counsel appearing for the 3rd respondent/Corporation, on instructions, submitted that it is incorrect to state that the petitioner has given representation dated 06.02.2017; that no such representation is available with the 3rd respondent.

6.The learned counsel for the petitioner denied the submission made by the learned counsel for the 3rd respondent/Corporation. He further submitted that the petitioner has also given another representation on 30.07.2017 and if a direction is given to the 3rd respondent to consider the said representation, that would suffice.

7.Be as it may, irrespective of the submissions made on either side, this Court passes the following order_

The 3rd respondent is directed to consider the representation dated 30.07.2017 given by the petitioner, by affording an opportunity of personal hearing to the petitioner, and to pass appropriate orders, on merits and in accordance with law, within a period of two weeks, from the date of receipt of a copy of this order. The petitioner is also directed to produce all the relevant documents before the 3rd respondent. Till such time, the status quo as on date shall be maintained by the respondents.

With the above terms, the writ petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssv

To

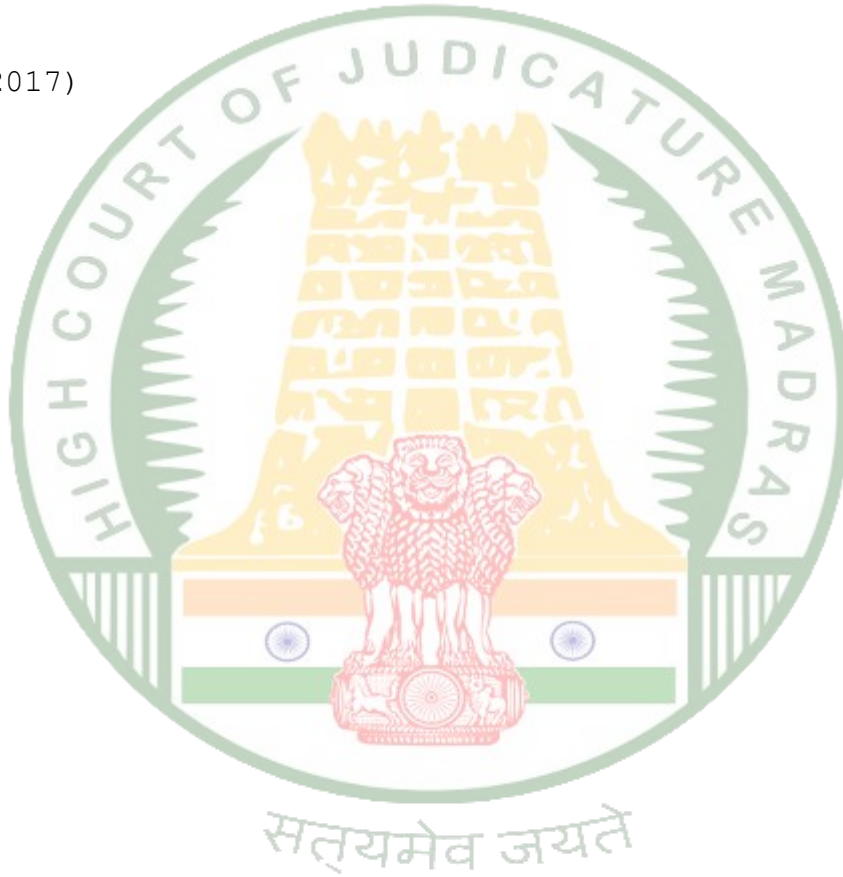
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+1cc to Mr.P.Saravana Sowmiyan, Advocate, S.R.No.55768
+1cc to Mr.J.Sathya Narayana Prasad, Advocate, S.R.No.55633

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GMI (CO)
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