

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2017

CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.27176 of 2017
and WMP.No.29030 of 2017

S.Guhanathan ... Petitioner
Vs.

1.The Commissioner,
Coimbatore Corporation
Coimbatore.

2.The Assistant Commissioner
Coimbatore Corporation
Coimbatore.

3.The Executive Engineer (Planning)
City Municipal Corporation
Coimbatore.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the entire records on the file of the third respondent in connection with the order to remove the encroachment dated 09.10.2017 vide in Na.Ka.No.8392/80/LP/R(CCN) No.190/81 and quash the same.

For Petitioner : Mr.N.Chinnaraj
For Respondents : Mr.J.Satyanarayana Prasad

O R D E R

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

By consent, the writ petition is taken up for final disposal. Mr.J.Satyanarayana Prasad, learned counsel accepts notice on behalf of the respondents.

2. The petitioner claims that he has purchased lands admeasuring to an extent of 2294 sq.ft.(5 cents and 116 sq.ft.) in Survey No.47/A1A in Veerakeralam Village, Coimbatore, by means of a registered sale deed bearing document No.4182/2013

dated 15.07.2013 and the procedure was also issued to the petitioner dated and that the subject matter of the said sale deed also includes old tiled house with other amenities. The petitioner, to his shock and surprise has received the impugned notice dated 09.10.2017 issued by the third respondent alleging that the petitioner had encroached the land to an extent of 22.80m x 9.50m [tiled house] = 216.60sq.m in Ward No.19, Veerakeralam, in Survey No.47/1A 41BB. LP/R(CN) No.190/81 and challenging the legality of the same, he has come forward to file the writ petition.

3. The learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that though the sale deed dated 15.07.2013 was executed in favour of the petitioner and that the title to the schedule mentioned property and it has been placed in the procedure, that the petitioner along with 53 others also were issued with joint patta No.1138 in respect of the lands admeasuring to an extent of 0.41.00 hectares in 47A/1A and the superstructures are also subjected to statutory levies and that without affording any opportunity, whatsoever, the petitioner was called upon to remove the alleged encroachment, whereby the petitioner's civil right is affected and therefore, the third respondent ought to have given a reasonable opportunity to put forth his claim and hence, prays for appropriate orders.

4. Per contra, the learned counsel appearing for the respondents would submit that the third respondent, after taking into consideration the relevant records and other materials, has rightly reached the conclusion that the petitioner had encroached upon public place and therefore, issued the impugned notice. He has also drawn the attention of this Court to Section 258 of the Coimbatore City Municipal Corporation Act, 1981, and the said provision does not contemplate that an opportunity be given to the alleged encroachers before passing the order of removal of encroachment and hence, prays for dismissal of this petition.

5. This Court has considered the rival submissions and perused the materials placed before it.

6. The petitioner in the typed set of documents has enclosed the registered sale deed dated 15.07.2013 executed in his favour, joint patta No.1138, as well as the documents evidencing the payment of statutory levies and he would contend that after his purchase, the land and the superstructure is maintained in the very same construction and if he is alleged to have encroached upon the public place or so, in such case, prior to issuance of impugned notice, an opportunity should be afforded to him, so that, he would be in a position to convince the third respondent.

7. In the light of the above facts and circumstances of the case and also upon considering the submissions, this Court, directs the third respondent to treat the impugned order dated 09.10.2017, as a show cause notice, for which, the petitioner is at liberty to submit his response along with necessary and authenticated documents within a period of four weeks from the date of receipt of a copy of this order to the third respondent, who on receipt of the same, shall afford an opportunity of personal hearing to the petitioner and shall consider and dispose of the representation of the petitioner and pass orders within a further period of eight weeks thereafter and communicate the decision taken to the petitioner and till such time, the third respondent shall defer further decision in terms of the impugned notice dated 09.10.2017. It is also made clear that the petitioner, till the disposal of the representation submitted by him to the third respondent, shall not alter the physical features or create any third party right in respect of the land and superstructure in question.

8. The writ petition stands disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Commissioner,
Coimbatore Corporation
Coimbatore.
- 2.The Assistant Commissioner
Coimbatore Corporation
Coimbatore.
- 3.The Executive Engineer (Planning)
City Municipal Corporation
Coimbatore.

+ 1 cc to Mr.N. Chinnaraj, Advocate Sr.75239

+ 1 cc to Mr. J. Sathyanarayana Prasad, Advocate sr.75142

W.P.No.27176 of 2017

RV(CO)
EU(0/11/2017)