

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.27177 of 2017
and WMP.Nos.29031 & 29032 of 2017

T.Devaki ... 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(CN) 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 would claim that her husband namely Mr.C.Thangavelu had purchased a land and property admeasuring to an extent of 2294 sq.ft. in Veerakeralam Village, Survey No.47/A1. It is also an approved layout of the registered sale

deed bearing document No.810/1984 dated 23.08.1984, on the file of the Sub Registrar Office, Thondamuthur and would further state that after the demise of her husband, she has succeeded to the said estate and she has been subjected to vacant land tax. The petitioner would further state that to her shock and surprise, she has been issued with the impugned notice dated 09.10.2017 by the third respondent, alleging that the petitioner had encroached the land admeasuring to an extent of 22.80m x 9.50m = 216.60m² and challenging the legality of the same, she came forward to file this writ petition.

3. The learned counsel appearing for the petitioner would submit that the order of removal of the alleged encroachment, vide impugned notice, affects the civil rights of the petitioner, for the reason that she has not been afforded with an opportunity whatsoever to put forth her claim and hence, prays for interference.

4. Per contra, the learned counsel appearing for the respondents would submit that the third respondent only after taking note of relevant records, has issued the impugned notice, alleging that the petitioner had encroached the property and thus, ordered removal of encroachment. He has also drawn the attention of the Court to the photograph enclosed in Page No.30 of the typed set of documents, which shows that the petitioner is putting up a superstructure on the vacant land and the said construction appears to be without any planning permission and hence, prays for dismissal of the writ petition.

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

6. A perusal of the typed set of documents would prima facie indicate that the husband of the petitioner is the owner of the land admeasuring to an extent of 2294 sq.ft. in Veerakeralam Village, Survey No.47/A1 and after his demise, the petitioner had also obtained the legal heirship certificate and for evidencing the payment of vacant land tax paid, she has produced the receipt dated 12.07.2013. Thus, it appears that the petitioner has civil rights in respect of the land in question and therefore, this Court, directs the third respondent to treat the impugned notice dated 09.10.2017, as a show cause notice for the petitioner, and the petitioner is at liberty to submit her 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 her 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.

7. In so far as the superstructure being constructed in the said land is concerned, the learned counsel appearing for the petitioner is not in a position to ascertain whether the superstructure being put up by the petitioner is in accordance with sanctioned plan or not. Therefore, the third respondent shall cause inspection of the said superstructure and if it is found that the said construction is in violation of relevant norms and regulations, the said official is at liberty to take further action in accordance with law.

8. The writ petition stands disposed of with the above directions. 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 Corporation
Coimbatore.
- 2.The Assistant Commissioner
Coimbatore Corporation
Coimbatore.
- 3.The Executive Engineer (Planning)
City Municipal Corporation
Coimbatore.

+ 1 cc to Mr.J. Sathyanarayana, Advocate SR.75141
+ 1 cc to Mr. N. Chinnaraja, Advocate SR.75240

W.P.No.27177 of 2017

RV(CO)
EU(20/11/2017)