

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:08.11.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE R.PONGIAPPAN

W.P.No.21835 of 2018
and
W.M.P.No.25605 of 2018

M.H.Jaithoon Bee

.. Petitioner

Vs.

1.The District Collector,
Coimbatore District,
Coimbatore.

2.The Commissioner,
Coimbatore Corporation,
Coimbatore – 641 001.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records pertaining to the proceedings of the 2nd Respondent in Na.Ka.No.6001-18-H1(S) dated 06.08.2018 and quash the same as illegal, incompetent and ultravires.

For Petitioner : Mr.D.Lakshmipathy

For 1st Respondent : Mr.S.N.Parthasarathy
Government Advocate

For 2nd Respondent : Mr.K.Magesh

ORDER

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

Heard both sides.

2.No counter is filed on behalf of the Respondents 1 and 2.

3.According to the Petitioner, she is residing at Old No.148, New No.36/6 Saramedu Main Road, Karumbukkadai, Kuniyamuthur, Coimbatore along with her family. She had purchased the property situated in Anupparpalayam Village, Coimbatore Taluk, Coimbatore District in S.F.No.253/2, measuring to an extent of 3843 $\frac{3}{4}$ square feet (8 cents 358 $\frac{3}{4}$ sq.ft.) vacant site from her vendor viz., A.Uthiriyam Joseph, S/o.Arockyasamy residing at 125, Bishop Colony, Coimbatore Town for valid sale consideration of 30,700/- through the registered Sale Deed dated 22.01.1986 on the file of the District Registrar, Coimbatore.

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4.The stand of the Petitioner is that ever since the date of purchase of the property in question, she is in enjoyment of the property and had constructed a house within the extent mentioned

in the schedule of the Sale Deed. She is paying the property tax, water tax and electricity bill till date and all of a sudden, some persons had visited her house and introduced themselves as Government servant and taken the measurement of her house front portion alone and gave a letter and informed her that she had made an encroachment of 10 feet in the road and constructed the house. Apart from that, the said Government servants had proceeded to inform that they would demolish the encroached portion of her house and gave seven days time for removing the purported encroachments.

5.The primordial plea taken on behalf of the Petitioner is that the impugned order/notice dated 06.08.2018 addressed to the Petitioner stating that she had encroached a portion of the road [1.3+4.0/7 x 20.08] in T.S. Ward 41, 42, TS Block 6, TS No.269 Part, Coimbatore District and constructed the building thereby caused hindrance to the public and she was granted seven days time to remove the encroachment in question. In this regard, the contention of the Petitioner is that the impugned notice suffers from serious infirmity because of the reason that no enquiry was conducted prior to the impugned notice dated 06.08.2018 and in

short, the impugned order dated 06.08.2018 of the 2nd Respondent is passed without following due procedure thereby violating the elementary principle of 'Natural Justice'.

6.Yet another argument advanced on behalf of the Petitioner is that the Petitioner had addressed a representation to the 1st Respondent/District Collector on 06.08.2018, whereby and whereunder, she had mentioned that she had purchased the vacant land in the year 1986, constructed a house in that place and living peacefully ever since from the date of her purchase and she is paying property tax, water tax etc. As a matter of fact, the Petitioner in her representation dated 06.08.2018 addressed to the 1st Respondent/District Collector, Coimbatore District had enclosed a copy of the document in respect of the property owned by her; copy of property tax payment receipt; copy of extract of book regarding payment of water tax; copy of receipt for payment of last electricity consumption charges.

7.Per contra, it is the submission of the Learned Special Government Pleader for the 1st Respondent that the Petitioner had addressed a representation dated 06.08.2018 to the 1st Respondent

/District Collector, Coimbatore District and the proper person to whom the representation should have been addressed by the Petitioner is only the 2nd Respondent/Commissioner, Coimbatore Corporation, Coimbatore.

8.It may not be out of place for this Court to make a pertinent mention that Section 256 of the Coimbatore City Municipal Corporation Act, 1981 speaks of 'Prohibition against obstruction in streets'.

9.It must be borne in mind that Section 258 of the Coimbatore City Municipal Corporation Act, 1981 speaks of 'Removal of Encroachments' and the same runs as under:

"258. Removal of encroachments.-

(1) The Commissioner may, by notice, require the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction (other than a door, gate, bar or ground-floor window) situated against or in front of such premises and in or over any street or any public

place the control of which is vested in the corporation.

(2) If the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give him a prescriptive title or where such period is less than thirty years, for a period of thirty years or that it was erected with the consent of any municipal authority duly empowered in that behalf, and the period if any, for which the consent is valid has not expired the corporation shall make compensation to every person who suffers damage by the removal or alteration of the same."

10.Indeed, a Municipal Corporation has a statutory obligation to remove the encroachments on footpath or pavement or in any street or any public place with a view to provide free flow of traffic and to uphold the public/pedestrian's right to move freely, safely and securely. The concerned Corporation must be eternally vigilant in not allowing the encroachments to spring up.

11. At this stage, this Court aptly points out the decision *Municipal Corporation of Delhi V. Hira Lal Tota Ram* reported in AIR 1972 Delhi 29 (V 59 C 8) at special page 30 wherein at paragraphs 4 & 5, it is observed as under:

"4. By the definition or "Delhi" in sub-section (10) of Section 2 of the Corporation Act, Delhi means the entire area of the Union territory of Delhi except New Delhi and Delhi Cantonment. The Corporation Act, therefore, applied to this village in which the alleged public street is situated. Sub-section (44) of Section 2 of the Corporation Act defines a "public street" to mean any street which vests in the Corporation as a public street. Under Section 298(1) of the Corporation Act, all streets within Delhi which are or at any time become public streets, and the payments, stones and other materials thereof I shall vest in the Corporation. Under Section 299(1) of the Said Act, the Commissioner shall, from time to time, cause all public streets vested in the Corporation to be

*properly maintained and kept in a state of repair. By **S. 42(p)** of the said Act. It shall be incumbent on the Corporation to make adequate provision by any means or measures which it may lawfully use or take for the removal of obstructions and projections in or upon streets, bridges and other public places. **Sections 320 and 321** of the Corporation Act prohibit encroachment over any street and, therefore, a fortiori on any public street. Under **Section 322**, the Municipal Commissioner may, without notice, cause to be removed any stall, chair, bench, box, ladder, bale, or other thing whatsoever, placed, deposited, projected, attached or suspended in, upon, from or to any place in contravention of the Act. The notice by the Corporation was obviously given in pursuance of these provisions of the Act with a view to the removal of the encroachment. **Section 461** of the Corporation Act provides that whoever contravenes any provisions of the Act mentioned in the first column of the Table in the Twelfth Schedule or fails to*

comply with any order or direction lawfully given to him shall be punishable with fine specified in that behalf in the third column of the Table in the Twelfth Schedule. A contravention of Sections 320 and 321 is punishable by fines of Rupees 200/- and Rupees 100/- respectively.

5. It is seen, therefore, that the Corporation Act not only vests a public street in the Corporation but also obliges the Corporation to remove encroachment from the same and provides a machinery to do so plus a penalty against a person who fails to remove the encroachment after being required to do so by the Corporation."

12.As far as the present case is concerned, the notice issued by the 2nd Respondent/Commissioner, Coimbatore Corporation, Coimbatore was dated 06.08.2018 and the Petitioner instead of addressing a reply to the 2nd Respondent had addressed only the 1st Respondent/District Collector, Coimbatore District, who is not a proper/an appropriate person to deal with the contents of the representation of the Petitioner dated 06.08.2018. As such, this

Court, to prevent an aberration of Justice, directs the Petitioner to submit a reply to the notice dated 06.08.2018 of the 2nd Respondent, by addressing a representation/communication/reply, narrating her version of the case and to expound/explain her position as regards the stand taken by her in her representation. The said representation/reply shall be submitted by the Petitioner diligently and that too within ten days from the date of receipt of copy of this order. Soon after receipt of the copy of the representation/reply of the Petitioner for the show cause notice of the 2nd Respondent dated 06.08.2018, the 2nd Respondent shall look into the contents of the said representation of the Petitioner with all seriousness and earnestness and to dispose of the said reply/representation of the Petitioner, by adhering to the Principles of Natural Justice, by providing necessary opportunities to the Petitioner to put forth her views. If the Petitioner requires any personal hearing, then, the Petitioner shall make a request before the 2nd Respondent, who shall consider the same in a humane and sympathetic manner and in any event, the 2nd Respondent shall pass a reasoned speaking order after applying his thinking judicial mind on all aspects of the matter and that too in a dispassionate manner, of course, within a period of three weeks thereafter. Till

such time, the 2nd Respondent is directed not to take coercive steps in this regard.

13. Before parting with the case, this Court points out that if the 2nd Respondent/Commissioner, Coimbatore Corporation, Coimbatore comes to a definite conclusion that the Petitioner had made an encroachment of 10 feet of the road, then, it is at liberty to take such lawful action to its logical end, as deemed fit and proper for removal of the encroachment in question.

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

(M.V., J.) (R.P.A., J.)

08.11.2018

Speaking Order

Index : Yes / No

Internet : Yes / No

Note: Issue order copy on 09.11.2018

Sgl

M.VENUGOPAL, J.
and
R.PONGIAPPAN, J.

Sgl

To

- 1.The District Collector,
Coimbatore District,
Coimbatore.
- 2.The Commissioner,
Coimbatore Corporation,
Coimbatore – 641 001.
- 3.The Government Advocate,
High Court, Madras.



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