

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9973 of 2013

and

M.P.No.1 of 2013

Shri Raman Chettiyar Memorial Trust, rep.by
its Managing Trustee R.Shanmugam Chettiyar,
Sri Raman Chettiyar School,
Velankurichi Village, Coimbatore.

..Petitioner

vs

Coimbatore Municipal Corporation, rep.by
its Commissioner,
Office of the Coimbatore Municipal Corporation,
Coimbatore.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Mandamus,
forbearing the respondents from in any way interfering with the
peaceful possession and enjoyment of the lands comprised in
Survey Field No.358/2 of an extent of 0.09 acres and in Survey
Field No.359/2B of an extent of 0.02 acres in Velankurichi
village, Coimbatore City Municipal Corporation by the petitioner.

For Petitioner : Mr.Kingston Jerold
For Respondent : Mr.K.Mahesh

O R D E R

The relief sought for in this writ petition is to forbear
the respondents from in any way interfering with the peaceful
possession and enjoyment of the lands comprised in Survey Field
No.358/2 of an extent of 0.09 acres and in Survey Field
No.359/2B of an extent of 0.02 acres in Velankurichi village,
Coimbatore City Municipal Corporation by the petitioner.

2.The writ petitioner claims that the Collector of
Coimbatore in his proceedings dated 04.04.1927 granted the land
comprised in Survey Field No.358/2 of an extent of 0.09 acres
and in Survey Field No.359/2-B of an extent of 0.02 acres in
Velankurichi village, Coimbatore Taluk, in favour of one
Mr.R.Subbaraya Chettiar, S/o.Raman Chettiyar. The said
Mr.R.Subbaraya Chettiar and his brother Mr.Velappan Chettiyar
and Mr.R.M.Palaniappa Chettiyar founded a Public Charitable

Trust under the name and style of Shri.Raman Chettiyar Thanneer Panthal Trust as per the Trust deed dated 02.01.1933. The said Trust was formed with the object of supplying drinking water to wayfarers in memory of their father Raman Chettiyar. The said lands are in possession and enjoyment of the Trust, which was later changed as Shri Raman Chettiyar Memorial Trust.

3.The writ petitioner claims that they are in possession and enjoyment of the lands in question pursuant to the assignment granted in the year 1927. On 16.02.2013, the Trust erected an iron fence over the boundaries of the said lands expending more than Rs.25,000/- (Rupees Twenty Five Thousand only). The officers of the Coimbatore Municipal Corporation inspected the said property on 28.02.2013 at about 4.00 p.m., and without giving any notice or intimation, unlawfully trespassed into the property and dismantled the iron fence, constructed by the writ petitioner. The petitioner claims that the authorities came into the property and damaged the fencing constructed by the writ petitioner. Thus, the writ petitioner is constrained to move the present writ petition.

4.The learned counsel appearing on behalf of the respondent/Coimbatore Municipal Corporation opposed the contentions by stating that the petitioner's Trust made an attempt by constructing an iron fencing. Even as per the affidavit filed by the writ petitioner, he constructed the iron fence on 16.02.2013 and the authorities removed the same on 28.02.2013. Thus, it is made clear that the petitioner made an attempt to put an iron fencing in the Corporation area and the same was prevented by the authorities of the Corporation. The prompt action taken by the competent officials of the Corporation cannot be said to be illegal. It is the duty of the officials to ensure that the properties belonging to the Corporations are maintained intact and to prevent any such encroachments by any third party. Thus, the very contention of the writ petitioner is erroneous and further the writ petitioner if at all claims any title over any property, it is for the petitioner to approach the competent Civil Court of Law. Contrarily, they cannot unilaterally construct a fencing in respect of the property belongs to the Corporation.

5.The learned counsel for the respondent further contended that the objections set out in the writ petition relates to supply of drinking water to wayfarers. However, the learned counsel for the respondent states that there is no supply of drinking water as of now by the petitioner. Thus, the very genuinity of the Trust itself is in question. The activities of the Trust are also to be scrutinised by the competent authorities. Thus, the writ petitioner's Trust are now attempting to encroach the Corporation properties by filing the present writ petition.

6.This Court is of an opinion that if at all, the writ petitioner is the owner of the particular portion of an immovable property, it is left open to the writ petitioner to approach the competent Civil Court of Law to establish title, ownership or possession. Contrarily, they cannot make any attempt to construct iron fencing without even establishing their title and ownership. When the Corporation officials prevented the writ petitioner from constructing the iron fencing, the writ petitioner instead of approaching the Civil Court, filed the present writ petition. Title, ownership and possession of the property can never be adjudicated in a writ proceedings under Article 226 of the Constitution of India.

7.However, the fact remains that the property now in question belongs to the Coimbatore Municipal Corporation and the authorities are duty bound to protect the same. This Court is of an opinion that all public properties including the Government land and the lands belonging to the Municipal Corporations are to be maintained for the public usage and in the interest of public. All the encroachers of the Corporation lands are to be evicted by following the procedures as contemplated under the Tamil Nadu Land Encroachment Act, 1905. There cannot be any leniency or misplaced sympathy in respect of the eviction of unauthorized persons or encroachers from the Government land, and the land belongs to the Municipal Corporations. Such lands are provided for future developments of the City Municipal Corporation and for the welfare of the people of that locality. Such being the purpose and object of providing the public land, the private parties can never be allowed to encroach such Government land and the Corporation properties. The authorities of the Corporation are to be vigil and the Commissioner of the Corporation has to conduct periodical review meetings for the purpose of assessing the encroachments in the City Municipal Corporation and in the event of negligence or inaction by any subordinate officials, suitable actions are to be taken against those officials, who have not initiated action against the encroachments. If the subordinate officials are not taking any steps to evict the encroacher and unauthorized occupants, then the Commissioner of Municipal Corporation is duty bound to initiate appropriate disciplinary proceedings against all such officials.

8.This being the view of this Court, all public officials are duty bound to maintain the public property intact and any encroachment on the public properties are to be evicted and the properties must be used only for the public purpose and in the interest of public. Thus, the claim of the writ petitioner to forbear the respondents from interfering with the peaceful possession and enjoyment of the public cannot be granted in the present writ petition.

9. Accordingly, the writ petition is devoid of merits and stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kak

To

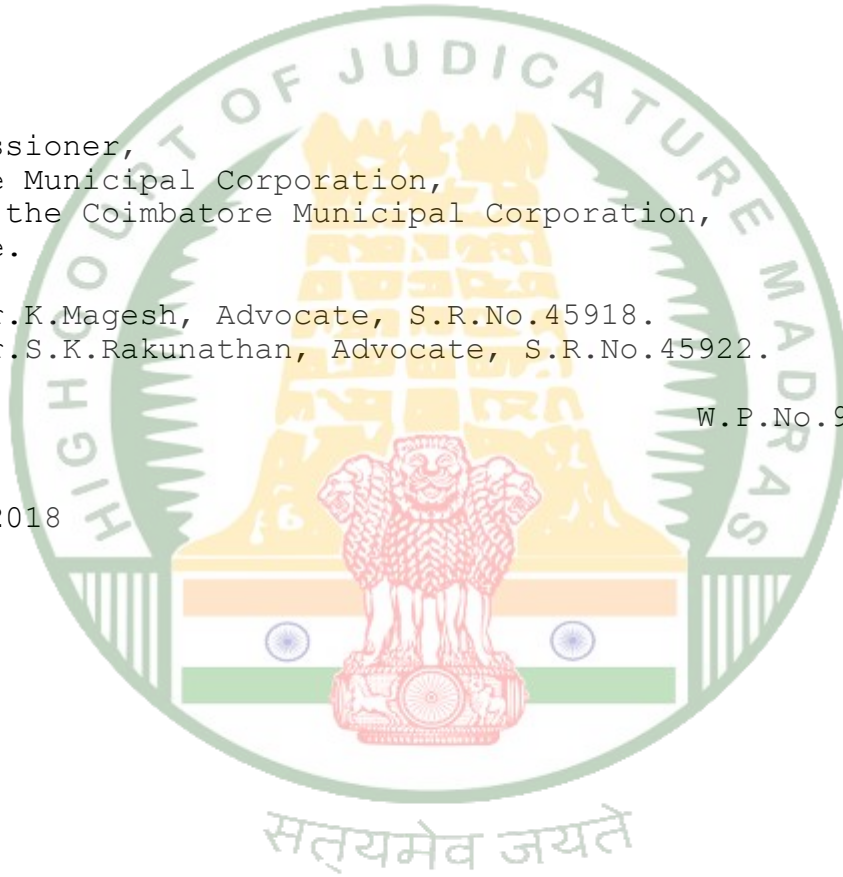
The Commissioner,
Coimbatore Municipal Corporation,
Office of the Coimbatore Municipal Corporation,
Coimbatore.

+1cc to Mr.K.Magesh, Advocate, S.R.No.45918.

+1cc to Mr.S.K.Rakunathan, Advocate, S.R.No.45922.

W.P.No.9973 of 2013

BR(CO)
BM 01/08/2018



WEB COPY