

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2019

CORAM

THE HON'BLE Mr. JUSTICE M.DHANDAPANI, J.

W.P.No.13398 of 2009

Tmt.K.S.Gandhimathi Manickam

...Petitioner

Vs

1. The Commissioner,
Coimbatore Corporation,
Coimbatore.

2. The Collector,
Coimbatore District,
Coimbatore.

3. Mr. Murugesan,
The Assistant Engineer,
North Zone Campus,
Corporation of Coimbatore,
R.T.O Office Road,
Coimbatore.

Cause title amended as per order
dated 3.9.09 by KVJ in M.P.3/09 in
W.P.No.13398/09.

... Respondents

WEB COPY

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records pertaining to the proceedings of 3rd respondent in Na.Ka.No.30098/2008/(MD.2) Ki.Di.2 dt.Nil-06-2009 signed on 15-06-09 quash the same to direct the respondents to extend the government grant sanctioned under Na.Ka.No.30098/07/MD/2 dated 11.08.08 to the petitioner.

For Petitioner : V. Manohar
For Respondents: Mr. R. Sivakumar for R1 and R3
Ms. K Bhuvaneswari, AGP for R2

O R D E R

Writ Petition is filed to call for the records pertaining to the proceedings of 3rd respondent in Na.Ka.No.30098/2008/(MD.2) Ki.Di.2 dt.Nil-06-2009 signed on 15-06-09 and direct the respondents to extend the government grant sanctioned under Na.Ka.No.30098/07/MD/2 dated 11.08.08 to the petitioner.

2. The petitioner is the owner of the property bearing New Door No.8, Old Door No.135, at Muthumariamman Koil Street in Sripuram, Papanaiakanpalayam at Coimbatore situated within the Coimbatore Corporation limits and in T.S.No.10/1009/2 by virtue of the settlement deed executed by the petitioner's husband on 07.08.2008 under the document No.2445/08 in S.R.O.Pelamedu.

3. The petitioner's husband purchased the property through sale deed dated 19.08.1994 vide document No.4001/94 from one C.Girirajan. The above sale deed clearly states about the correct measurement of the property right from 1974 onwards.

4. The Government of Tamil Nadu sanctioned a scheme through local body to improve the standard of living through an integrated housing and slum development projects. The petitioner applied for the scheme. Thereafter, the first respondent vide order dated 11.08.2008 sanctioned a sum of Rs.1,60,500/- and out of the said amount, the petitioner was given 1st installment of Rs.28,000/- through cheque on 16.04.2009. While that being so, at the instigation of 3rd parties, particularly the neighbor of the petitioner, who is a relative of the Assistant Commissioner of Corporation, induced the other officials to take action against the petitioner and the Corporation issued the demolition notice, challenging the said notice, the petitioner filed O.S.No. 2028 of 2006 on the file of the III Additional District Munsif's Court, Coimbatore and the Civil Court decreed the suit and issued a direction to the respondent Corporation for the removal of the encroachment if any made after following due process of law. While such being the position, the third respondent passed the impugned order dated 15.06.2009 to the effect that the second installment would be paid only after the removal of the encroachment made on the road by constructing toilet,

steps, etc. and further it was warned in that order that if the petitioner failed to remove the encroachments, then the respondent Corporation would remove the unauthorized constructions and collect the charges from the petitioner. Against this order, the present Writ Petition is filed.

5. Learned Counsel for the petitioner would submit that the petitioner has no objection to the removal of the unauthorized construction if allegedly made on the road side and even the Civil Court also had passed a decree to remove the illegal construction after following the due process of law.

6. Learned Additional Government Pleader for the respondent would submit that as the petitioner had made encroachment on the road side, liberty may be granted to the corporation to remove the illegal construction made by the petitioner.

7. In view of the above, without quashing the impugned order passed by the respondent Corporation, I am inclined to issue direction to the respondent Corporation to measure the property in the presence of the petitioner and if the measurement reveals that the petitioner has made a construction on the road side then such construction may be removed in appropriate manner. After such removal, if the petitioner agrees to make the construction without any encroachment or deviation, then the other instalments may be disbursed in favour of the petitioner. The said process has to be completed within a period of three (3) months from the date of receipt of a copy of this order. With the above directions, Writ Petition is disposed of. No costs.

mrn

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
Coimbatore Corporation, Coimbatore.

2. The Collector,
Coimbatore District, Coimbatore.

+1cc to Mr.V. Manohar , Advocate SR.No. 48825

+1cc to Mr.R. Sivakumar , Advocate SR.No. 48776

+1 cc to Government Pleader Sr.No. 48684

W.P.No.13398 of 2009

rsi co A.SK(30/07/2019)