

In the High Court of Judicature at Madras

Dated : 17.2.2020

Coram :

The Honourable Mr. Justice T.S. SIVAGNANAM

Writ Petition No. 16697 of 2016 &
WMP. Nos. 14427 of 2016 & 2771 of 2020

Y. Thamotharan

..Petitioner

Vs.

1. The Commissioner, Coimbatore
City Municipal Corporation,
Coimbatore.

2. S. Vasudevan

..Respondents

PETITION under Article 226 of The Constitution of India
praying for the issuance of a Writ of Certiorari to call for the
records in proceeding Na. Ka. No. 11469/2014/MH-6 dated 18.4.2016
of the 1st respondent and quash the same.

For Petitioner : Mr. R. Amardeep for
M/s. Tamizh Law Firm

For Respondent-1 : Mr. S. Saravanan

For Respondent-2 : Mr. B. Nedunchezhiyan

ORDER

I have heard Mr. R. Amardeep, learned counsel appearing on
behalf of M/s. Tamizh Law Firm, learned counsel on record for the
petitioner, Mr. S. Saravanan, learned Standing Counsel for the
first respondent and Mr. B. Nedunchezhiyan, learned counsel for
the second respondent.

2. The petitioner seeks to quash the impugned notice issued
by the first respondent dated 18.4.2016.

3. In the impugned notice, it has been stated that the
officials of the Corporation inspected the petitioner's building
on 18.4.2016, that during the course of inspection, they found
that the building is in a dilapidated condition unsafe for
occupation and that it will be dangerous not only to the owner
and the inhabitants of the building, but also to the neighbours,
which includes the second respondent.

4. According to the petitioner, the impugned notice lacks bona fides, that it has been issued at the behest of the second respondent, who purchased the other portion of the property from the petitioner's brother, that there is a dispute between the petitioner and the second respondent in respect of the common wall, that the second respondent filed a suit in O.S.No.1553 of 2014 on the file of the District Munsif Court, Coimbatore, in which, the petitioner has been arrayed as the first defendant and his two brothers as defendants 2 and 3. The second respondent filed the said suit seeking to grant a decree for permanent injunction to restrain the defendants therein (including the petitioner herein) from in any manner preventing him from demolishing and reconstructing the buildings in the suit property.

5. It is submitted by the learned counsel for the petitioner that suppressing all the facts, the second respondent filed WP.No.11469 of 2015 to dispose of his representation dated 10.3.2015 and to direct the respondents therein to inspect the petitioner's property alleging that it was an unapproved construction and that the building is in a dilapidated condition. It is further stated that in the said writ petition filed by the second respondent herein, the petitioner was not impleaded as a party. Pursuant to the directions issued in the said writ petition in the order dated 21.4.2015, it appears that the impugned notice has been issued.

6. Though in the counter affidavit filed by the first respondent it has been stated that an inspection was conducted by the officials of the Corporation on 18.4.2016, it is not clear as to whether any notice was issued to the petitioner and as to whether the petitioner's signature was obtained at the time of inspection. Considering the fact that this writ petition is pending from the year 2016, it may not be necessary for this Court to examine as to whether the enquiry conducted earlier was proper or not and such other matters, as, if any action is to be initiated against the petitioner, the pre-requisite is a fresh inspection.

7. It is stated that the petitioner's building is unauthorized.

8. Obviously, the building of the second respondent is also an unauthorized construction.

9. It is further stated that the petitioner has got approved plan as early as 1976 and the allegation that the petitioner's building is an unauthorized construction is false.

10. In any event, if any building or superstructure is in a dilapidated condition causing danger to the inhabitants and the neighbours, then the first respondent is entitled to take action in accordance with the provisions of the Coimbatore City Municipal Corporation Act, 1981 and more particularly Section 327 of the said Act.

11. In the light of the above, the writ petition is allowed and the impugned notice is set aside on the ground that it is in violation of the principles of natural justice. There will be a direction to the first respondent to direct his officers to inspect the buildings of both the petitioner as well as the second respondent after issuing notice to them. During the course of inspection, the Inspecting Officials shall take note of all the aspects such as stability of the buildings, type of construction and the issue as to whether the construction is as per the approved plan, etc. During the course of inspection, the petitioner and the second respondent shall be present and they should not adopt dilatory tactics. After the inspection is over, if it is found that there is any violation or the building is not capable of put to continued occupation, a show cause notice shall be issued to the parties namely the petitioner and the second respondent and an opportunity shall be granted to submit their objections. Along with the show cause notice, a copy of the inspection report shall be enclosed. After receipt of objections, fresh orders shall be passed by the first respondent on merits and in accordance with law. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To

The Commissioner,
Coimbatore City Municipal Corporation, Coimbatore.

+1 cc to M/s.Tamizh Law Firm, Sr.No. 14143
+1 cc to M/s.B.Nedunchezhiyan, Advocate Sr.No. 13770
+1 cc to M/s.S.Saravanan, Advocate Sr.No. 12992

AKM/28.02.2020/3P-5C /

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