

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.14132 of 2020
and WMP.No.17553 of 2020

M/s.Kids Clubs Matriculation School,
rep.by its Chairman
Mr.Mohan K.Karthick ...Petitioner

Versus

1. The Commissioner of Tiruppur City Municipal Corporation,
Tiruppur City Municipal Corporation,
Mangalam Road,
Tiruppur 641 604.
2. The District Collector,
Collectorate of Tiruppur,
Tiruppur 641 604.
3. The Tahsildar,
Tiruppur Taluk,
Tiruppur 641 604. ...Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorarified Mandamus to call the records of the 1st respondent made in Notice issued in Na.Ka.No.317/20/E1/Z3 under Section 258(4) read with Section 441 of the Tiruppur City Municipal Corporation Act 2008 dated 06.08.2020 and to quash the same and consequently direct the 1st respondent to consider the representation made to the 1st respondent dated 13.08.2020.

For Petitioner : Ms.S.Yogalakshmi

For Respondents: Ms.H.P.Shanthi
for R1 to R3

ORDER

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

The petitioner claims to be the Chairman of the petitioner School M/s.Kids Club Matriculation School and their group Institutions namely, M/s. Kids Club International School, M/s.Kids Club School, M/s.Kids Club Matriculation Higher Secondary School and according to the learned counsel appearing for the petitioner on a query posed by this Court, the said Schools are also catering to the needs of poor, needy and downtrodden and they are not collecting any exorbitant or unreasonable funds and their only interest is to develop the academic and other career of the children, who are studying in the said School.

2. One of the Schools namely, M/s.Kids Club Matriculation School located in Survey No.223/3, 230/3, 220/4 which correspond to T.S.No.46/1, 3, 4, 5, 6, in Ward 'N' admeasuring an extent of 1.00 acre in Sheriff Colony, 2nd Street, Thirupur Taluk, Thirupur District, Coimbatore Corporation, alleged to have situated in the 'Oodai Poramboke' as per the impugned notice dated 06.08.2020 and it is relevant to extract paragraph no.4 of the affidavit filed in support of this Writ Petition:

4. I submit that a linear portion of the Kids Club School is alleged to have situated in the said Oodai Poramboke as per the impugned notice dated 06.08.2020. But the real fact is even after the compound wall of the Kids Club School alleged to have built by encroaching the said Oodai and towards the middle of the said Oodai land, there is a series of house being built by many people. I have annexed photographs of the said series of residential units which are still situated at the middle of the said oodai. In this connection, I am confessing that our school runs over a linear portion of around 19 cents (approximately 711 sq m) of the said Oodai land along the compound wall of our School.

3. The learned counsel appearing for the petitioner would submit that the petitioners are also having the benefit of Sale Deeds as well as Sale Agreements dated 13.05.2010, 14.06.2010 and 16.06.2010, 27.06.2010, 29.06.2010, 06.01.2011, 02.02.2011, 18.11.2010, 30.03.2011, 16.05.2012, 30.05.2012, respectively and they have been issued with B-Memos dated 07.06.2019 also. The primordial submission made by the learned counsel appearing for the petitioner is that though their applications for Patta are pending without passing any orders, they are sought to be dispossessed from the land in question and would further add that if their representation dated 13.08.2020 to the authorities

is considered and disposed of in a proper perspective, they would be in a position to convince the 1st respondent as to their genuineness and prays for appropriate orders.

4. Ms.H.P.Shanthi, learned counsel appearing for the 1st respondent would submit that admittedly, the petitioner is an encroacher, despite having reputation and standing in a social ladder and also drawn the attention of this Court to the representation dated 13.08.2020, submitted in response to the impugned notice, wherein they have admitted about the payment of penalties to the B-Memo and as such they are liable to be vacated and in this regard, due process of law is also followed and prays for dismissal of this Writ Petition.

5. This Court heard the submission of the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents 1 to 3 also.

6. Section 8(4)(a) of the Tirupur City Municipal Corporation Act, 2008, says that any reference to the city of Coimbatore and Coimbatore Municipality, shall by reason of this Act, be construed as a reference to the city of Tiruppur and Tiruppur Municipality, respectively. Therefore Section 258 of the Coimbatore City Municipal Corporation Act, 1981, is having application to the case on hand and it is relevant to extract the same:

'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''.

7. The petitioner, in response to the impugned notice dated 06.08.2020 issued by the 1st respondent, submitted the representation dated 13.08.2020. This Court in the light of Sub Section 2 of Section 258 of the Coimbatore City Municipal Corporation Act, 1981, is directed to consider the said representation dated 13.08.2020 and pass appropriate orders in accordance with law within a period of six weeks from the date of receipt of a copy of this order and inform the decision taken to the petitioner and till such time, the 1st respondent shall defer further proceedings in terms of the impugned notice dated 06.08.2020. It is also made clear that the petitioner till the disposal of the representation dated 13.08.2020 by the 1st respondent, shall not create any third party right in respect of the land in question as well as superstructure standing thereon.

8. The Writ Petition stands disposed of accordingly. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Tiruppur City Municipal Corporation,
Tiruppur City Municipal Corporation,
Mangalam Road, Tiruppur 641 604.

2.The District Collector,
Collectorate of Tiruppur,
Tiruppur 641 604.

3.The Tahsildar,
Tiruppur Taluk, Tiruppur 641 604.

+1cc to M/s.Wall cliffs law firm, sr no.33447

WP.No.14132 of 2020

MG (CO)
RMP (01/12/2020)