

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.01.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.1825/2021 & WMP.No.2057/2021

[Video Conferencing]

R.R.Darshan Flat Owners Association,
rep.by the Secretary
R.R.Darshan Apartments
Near G.V.Residency
Souripalayam Post
Coimbatore 641 007.Petitioner

Versus

1.The Commissioner
Corporation of Coimbatore
Coimbatore 641 001.
2.S.Velusamy
3.M/s.R.R.Housing India [P] Ltd
Ponnurangam Road, [West]
R.S.Puram, Coimbatore 641002.Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records pertaining to the impugned Notice/Order issued by the 1st respondent dated 24.12.2020 and quash the same as illegal, arbitrary and against the principle of natural justice.

For Petitioner : Ms.M.Abbiraami

For R1 : Mr.Sivakumar, Standing counsel

ORDER

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

(1)By consent, the writ petition is taken up for final disposal and is disposed of by this order.

(2)Mr.Sivakumar, learned Standing counsel accepts notice on behalf of the 1st respondent.

(3)The petitioner Association, in the affidavit filed in support of this writ petition, would aver among other things that the Local Town Planning Authority of Coimbatore, vide proceedings dated 09.06.2015, in Na.Ka.No.2310/2014/U.Thi.Ku.2, had accorded Planning Permission to put up stilt + four floors, in the form of 'A' and 'B' Blocks with 120 tenements in Uppilipalayam Village, situated at SF.No.130/1, 2 part & 136/1 part, 2 Part, New Ward No.32, Block No.47, TS.No.20/2. 22/2, admeasuring to an extent of 7593.00 sq.mts., of plot and the constructions have been put up strictly in accordance with Sanction Plan and so also the compound wall.

(4)The learned counsel for the petitioner would submit that all of a sudden, the 1st respondent has sent a notice dated 24.12.2020, u/s.258[4] and 441 of the Coimbatore City Municipal Corporation Act, alleging that on a road in Ward No.64, belonging to Coimbatore City Municipal Corporation, compound walls have been put up on both sides of the road and that, gates have also been put up and thereby it is obstructing the movement of the general public and also causing health hazard and called upon the owners/in occupation of RR.Darshan Multi Storeyed Tenements to remove the same within a period of ten days from the date of receipt of the notice, failing which, appropriate action will be taken in accordance with law.

(5)The primordial submission of the learned counsel for the petitioner is that admittedly the notice did not address to any individual or the Association and responding to the same, one Mr.Sathish, who is one of the tenements and a resident of Plot A2, F11 of R.R.Darshan Multi Storeyed Complex, also sent a detailed response dated 28.12.2020 to the 1st respondent and despite receipt and acknowledgment, no response is forth coming and therefore, the petitioner is constrained to approach this Court by filing this writ petition.

(6)Mr.Sivakumar, learned counsel appearing for the 1st respondent would submit that since the impugned notice is pursuant to the invocation of the relevant statutory provisions, the petitioner cannot make any grievance and prays for dismissal of this writ petition.

(7)This Court has considered the rival submissions and also perused the materials placed before it.

(8)It is relevant to extract Section 258 of the Coimbatore City Municipal Corporation Act, 1981:-

'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."
- (9) Though the petitioner has prayed for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, in this writ petition, permits the petitioner Association to submit a detailed representation by enclosing relevant and authenticated documents to the 1st respondent within a period of two weeks from the date of receipt of a copy of this order/uploading of the order in the website and upon receipt of the same, the 1st respondent shall, after affording an opportunity of personal hearing to the Secretary of the petitioner Association, dispose of the said representation in accordance with law as expeditiously as possible and not later than four weeks thereafter and communicate the decision taken, to the petitioner and till such time, the 1st respondent shall defer further decision in terms of the impugned notice dated 24.12.2020 and it is also made clear that the petitioner Association, in the interregnum, shall not alter the physical features of the alleged obstruction - compound wall.

(10)The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

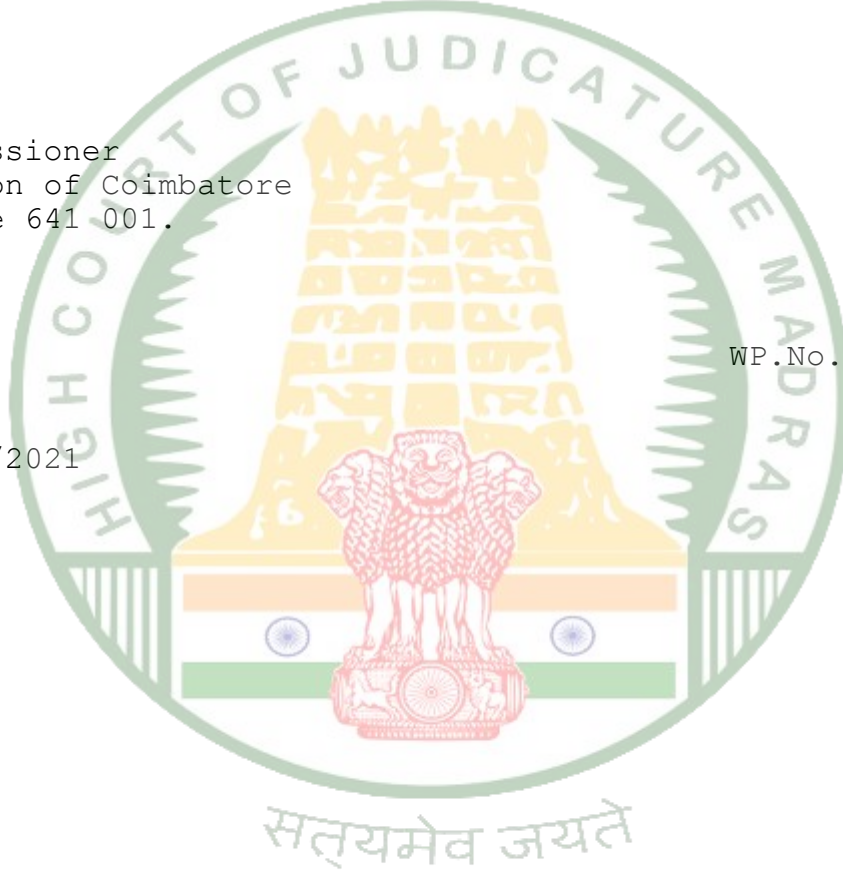
AP

To

The Commissioner
Corporation of Coimbatore
Coimbatore 641 001.

WP.No.1825/2021

BR (CO)
KKV/25/02/2021



WEB COPY