

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 25.02.2021
CORAM
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN
WP.No.4177/2021 & WMP.Nos.4791 to 4793/2021

P.Sivakumar

.. Petitioner

Versus

- 1.The District Collector
O/o.The District Collector Coimbatore
7/1, State Bank Road
Gopalapuram, Coimbatore,
Tamil Nadu 641 018.
- 2.The Revenue Divisional Officer
Coimbatore [South]
7/1, State Bank Road
Gopalapuram, Coimbatore,
Tamil Nadu 641 018.
- 3.The Commissioner
Corporation of Coimbatore
Coimbatore-641 001.
- 4.The Tahsildar
Coimbatore South
Coimbatore 641 018.
- 5.The Town Surveyor [Land Survey]
Corporation of Coimbatore
Central Zone, Coimbatore.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the entire records relating to the impugned notice dated 10.02.2021 issued by the 3rd respondent, quash the same as illegal and consequently direct the 4th respondent to conduct enquiry to delete the name of the 3rd respondent in the Town Survey Land Record [TSLR] certificate by adding the petitioner name based on the Circular dated 05.02.2021 issued by the 2nd respondent.

For Petitioner : Mr.R.Shanmugam
For RR 1, 2 & 4 : Mr.S.Kamalesh Kannan
Government Advocate
For RR3&5 : Mr.R.Sivakumar
Standing counsel

ORDER

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

- (1) By consent, the writ petition is taken up for final disposal and is disposed of by this order.
- (2) Mr.S.Kamalesh Kannan, learned Government Advocate accepts notice on behalf of respondents 1,2 and 4 and Mr.R.Sivakumar, learned Standing counsel accepts notice on behalf of respondents 3 and 5.
- (3) The petitioner would state that his father, viz., Thiru.Palanisamy, had purchased the land admeasuring to an extent of 7 $\frac{1}{4}$ cents comprised in S.No.368 situate at Ramanathapuram, Coimbatore Taluk and District from one Thiru.Arumugam, through a registered Sale Deed bearing Doc.No.5427/1980 dated 08.10.1980 registered on the file of the office of the Sub Registrar, Peelamedu at Coimbatore and from that date, the petitioner's father and family members were in possession and enjoyment of the same and thereby, carrying on the agricultural activities. The petitioner would further state that his father has executed a Will bearing No.30/2014 dated 12.02.2014, registered on the file of the office of the Sub Registrar, Peelamedu in his favour and thereafter, the petitioner continues to remain in possession of the same and he has also been issued with patta.
- (4) The learned counsel for the petitioner would submit that the petitioner, having noted that in Town Survey Land Record, the name of the Coimbatore Corporation has been wrongly incorporated in respect of the land, which is the subject matter of the above said Will and the petitioner has submitted a representation to the jurisdictional Land Surveyor Office, Coimbatore for rectification of the said mistake and the Revenue Divisional Officer, Coimbatore South vide Memo dated 05.02.2021 in O.Mu.No.313/2021/Aa2, has forwarded the same to the Tahsildar, Coimbatore South, for taking appropriate action.

(5) The primordial submission made by the learned counsel for the petitioner is that pendency of the same, to the shock and surprise of the petitioner, on behalf of the 3rd respondent, the impugned notice dated 10.02.2021 came to be issued u/s.258 [1] and 441 of the Coimbatore City Municipal Corporation Act, 1981, calling upon the petitioner to remove the encroachment within 48 hours, failing which prosecution will be launched against him u/s.441 of the said Act. In sum and substance, it is the submission of the learned counsel for the petitioner that in the light of the overwhelming documentary evidence as to the title, ownership and possession on the part of the petitioner, he should have been afforded with a reasonable opportunity to put forth his submission and without doing so, the 3rd respondent is hurriedly proceeding with the matter and therefore, prays for appropriate orders.

(6) Per contra, it is the submission of the learned Government Advocate appearing for respondents 1,2 and 4 and the Standing counsel appearing for respondents 3 and 5 submit that since due process of law is taking place, the petitioner cannot make any grievance and pray for dismissal of this writ petition.

(7) This Court has carefully 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) This Court, taking into consideration, the above facts and circumstances and without going into the merits of the claim projected by the petitioner in his representation, permits the petitioner to submit his response to the impugned notice dated 10.02.2021 issued by the 3rd respondent by enclosing all relevant and authenticated documents 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 3rd respondent is directed to consider the same on merits and in accordance with law in the light of the above cited provision and pass appropriate orders within a further period of four weeks thereafter and communicate the decision taken, to the petitioner and till such time, shall defer further decision in terms of the impugned notice. It is made clear that the petitioner, till the disposal of the representation by the 3rd respondent, shall not create any third party rights in respect of the land in question.

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

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

ap
To

1.The District Collector
O/o.The District Collector Coimbatore
7/1, State Bank Road
Gopalapuram, Coimbatore,
Tamil Nadu 641 018.

2.The Revenue Divisional Officer
Coimbatore [South]
7/1, State Bank Road
Gopalapuram, Coimbatore,
Tamil Nadu 641 018.

3.The Commissioner
Corporation of Coimbatore
Coimbatore-641 001.

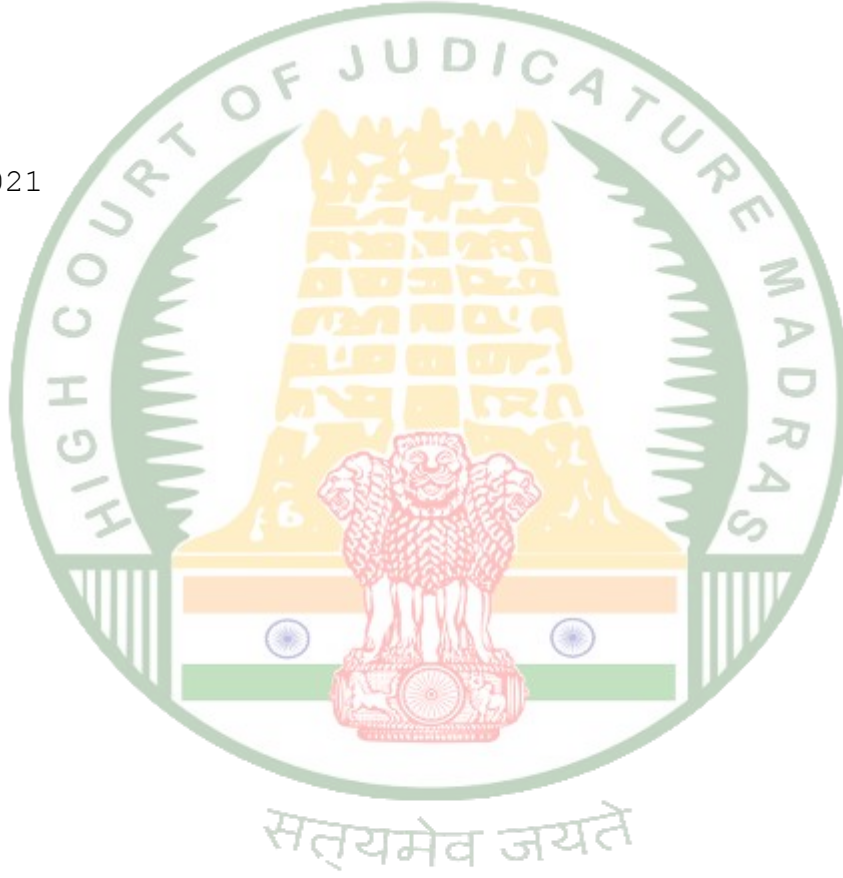
4.The Tahsildar
Coimbatore South
Coimbatore 641 018.

5.The Town Surveyor [Land Survey]
Corporation of Coimbatore
Central Zone, Coimbatore.

+1 cc to Mr.R.Shanmugham Advocate sr11325

WP.No.4177/2021

gpl (co)
aa15/03/2021



WEB COPY