

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.03.2021

CORAM

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

WP.NO.8017/2021 & WMP.No.8567/2021

Francis

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Petitioner

Versus

The Commissioner
Coimbatore Corporation,
Coimbatore.

..

Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating to the impugned order dated 25.02.2021 made in proceedings No.Nil by the respondent and quash the same.

For Petitioner : Mr.D.R.Arun Kumar

For Respondent : Mr.K.Natarajan
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.K.Natarajan, learned Standing counsel accepts notice on behalf of the sole respondent/Municipality.
- (3) The petitioner claims to be the owner of the property admeasuring to an extent of 3722 sq.ft., of land along with ACC Cement Sheet superstructure and other amenities in Krishnarayapuram Village, Coimbatore District in TS.No.10/158/2A and TS.No.10/259/2A1 and TS.No.10/163/A-Balaji Nagar, and he got right, title and possession, in respect of the said land through a registered Sale Deed dated 28.03.2014, executed by the Court of Additional District Judge, Coimbatore on behalf of Thiru.T.Lakshmanan, owner of J.K.Industries and Sanjeevi Agencies, as well as his son L.Sanjeevi. The petitioner, after the said purchase, got mutation in the revenue records in his name and his name is also reflected in the Town Survey Land Register of Coimbatore Town.

- (4) The learned counsel for the petitioner would submit that one R.Kulasekaran, S/o.R.Ramakrishnan Naidu, filed OS.No.1490/2003 against the respondents herein praying for declaration and consequential permanent injunction in respect of the land reserved for public purposes in TS.Nos.158/2, 159/2 [part] and 163 of Ward No.10 and TP Scheme-16, then Municipal Ward No.2, Present Ward No.18 of Krishnarayapuram Village, Coimbatore District and the said suit came to be decreed after contest, vide judgment and decree dated 26.06.2007 and on the challenge being made, it was also confirmed vide judgment and decree dated 23.01.2009 in AS.No.114/2007 on the file of the Court of III Additional Subordinate Judge, Coimbatore. The respondent filed SA.Nos.510 and 518 of 2019 against the said judgment and decree and a Single Bench of this Court, vide common judgment and decree dated 26.04.2019 made in SA.Nos.510 and 518 of 2019, has allowed the said appeals and thereby, setting aside the judgment and decree passed by the Lower Appellate Court confirming the judgment and decree passed by the Trial Court.
- (5) The primordial submission made by the learned counsel for the petitioner is that the property is the subject matter of the second appeals in SA.Nos.510 and 518 of 2019, is nothing to do with the property owned by the petitioner and on an erroneous assumption and presumption, the impugned notice came to be issued based upon the judgment and decree dated 26.04.2019 passed in SA.Nos.510 and 518 of 2019 and prays for interference.
- (6) Per contra, Mr.K.Natarajan, learned Standing counsel appearing for the respondent / Municipality would submit that since due process of law is being followed in terms of the above cited common judgment and decree passed in the Second Appeals, the petitioner may not 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 to submit a representation/response by enclosing the relevant and authenticated documents to the respondent - Municipality within a period of three weeks from the date of receipt of a copy of this order / uploading of the order in the website and the respondent, upon receipt of the same, shall afford an opportunity of personal hearing to the petitioner and thereafter, consider and dispose of the said representation on merits and in accordance with law 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 dated 25.02.2021. It is also made clear that the petitioner, till the disposal of the representation by the respondent, shall not create any third party right in respect of the land and superstructure in question.
- (10) The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

AP

To

The Commissioner
Coimbatore Corporation,
Coimbatore.

+1cc to Mr.D.R.Arun Kumar, Advocate SR.No.20763

WP.NO.8017/2021
& WMP.No.8567/2021

PMK (CO)
GMY (16/06/2021)