

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2021

CORAM

THE HON'BLE MR. JUSTICE C.SARAVANAN

W.P. No. 554 of 2016

and

W.M.P. No. 390 of 2016

Triyambhava House Owners Association,
Represented by its President,
Kalapatti Main Road, Sitra,
Coimbatore - 641 014.

... Petitioner

Vs

1. The Commissioner,
Corporation of Coimbatore,
Coimbatore.
2. The Deputy Commissioner,
East Zone, Corporation of Coimbatore,
Coimbatore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the Respondent herein to restore the compound wall demolished by the 2nd respondent on 28.12.2015 situate to the north of the car park in S.No.425/6 as shown in the plan annexed to the Gift Deed dated 24.02.2006 registered as Doc.No.1507 of 2006 on the file of the SRO, Gandhipuram.

For Petitioner : Mr.R.Krishna Prasad

For R1 : Mr.J.Sathya Narayana Prasad

For R2 : Mr.N.Inbanathan

Additional Government Pleader

ORDER

The petitioner's Association has made a request to the owners of the property in the lay out.

2. This writ petition has been filed by the petitioner for issuance of writ of Mandamus, to direct the respondents to restore the compound wall demolished by the 2nd respondent on 28.12.2015 in the layout where the petitioner's property is situated.

3. It is the case of the petitioner that the petitioner was issued with a notice dated 22.1.2015 by the second respondent which called upon the petitioner to remove compound in Survey Nos. 425/1, 426/2 and 427/1 which was gifted in favour of the respondents vide Gift Deed dated 1.4.2005 registered as Document No.2340/2005 at the time of formation of the layout by the promoters of the layout from whom the members of the petitioner's association had purchased the land and had put up their house. It is submitted that the promoter had also put up the said compound which has been demolished by the respondent without hearing them.

4. The grievance of the petitioner is that though the said notice specifically referred to lands in Survey Nos. 425/1, 426/2 and 427/1 Gift Deed dated 1.4.2005 registered as Document No 2340/2005, the land covered by the said gift deed covered only the land in Survey Nos. 429/1B, 429/2 A, 425/11 and therefore the notice was bad in law. It is further submitted that to the above notice, the petitioner Association had also replied on 30.1.2015. However, without considering the reply of notice to the petitioner, the second respondent demolished the compound on 28.12.2015.

5. The learned counsel for the Coimbatore Corporation on the other hand submitted that the promoter executed a Gift Deed dated 7.4.2005 and registered it as Document No 2364 of 2005. However, the same land was again gifted vide another document in Gift Deed dated 24.2.2006 registered as Document No. 1507 of 2006 by altering the extent and thus the respondents believe that the land in question belongs to the petitioner Association. The learned counsel for the respondent corporation further submits that the petitioners have suppressed the existence of. Gift Deed dated 7.4.2005 and registered it as Document No 2364 of 2005 and have filed the writ petition.

6. I have considered the arguments advanced by the learned senior counsel for the petitioner and the Corporation of Coimbatore for the first and second respondents. It is noticed that at the time of admission, status quo was ordered by this court. There are disputed questions of fact arising out of the gift deeds dated 01.04.2005 registered as Gift Deed Document Nos. 2340/2005, 2341/2005, and Gift Deed Document No.2364/2005 dated 24.02.2006 and Gift Deed Document No 1507/2006 dated 24.04.2006.

7. I therefore direct first respondent to call upon the petitioner for a personal hearing. If necessary suitable

corrigendum to notice dated 22.1.2015 may be issued to the petitioner to explain as to why the land on which the compound wall stood originally should not be retrieved back in the light of Gift Deed Document No.2364/2005 dated 24.02.2006 and Gift Deed Document No.1507/2006 dated 24.04.2006.

8. First respondent may therefore issue such notice to that effect within a period of 30 days from date of receipt of this order. The petitioner shall thereafter file its objection. If necessary, surveyor from the concerned department of the Government may be appointed for the aforesaid purpose. Such survey shall be carried out in presence of the responsible office bearer of the petitioner after due notice to the petitioner.

9. In case it is found that the second respondent had demolished the land belonging to the Association covered by any of the above mentioned Gift Deeds, the respondent corporation shall restore the compound as was prayed for by the petitioner.

10. This exercise shall be completed by the respondents within a period of six months from date of receipt of this order. Pending such exercise, status quo ordered by this Court on 07.01.2016 at the time of admission of the writ petition shall be maintained.

11. This Writ Petition stands disposed with the above observation. No cost. Consequently, connected writ miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

arb

To

1. The Commissioner,
Corporation of Coimbatore,
Coimbatore.

2. The Deputy Commissioner,
East Zone, Corporation of Coimbatore,
Coimbatore.

+1cc to M/S.Sarvabhauman Associations, Advocate SR.No. 12069

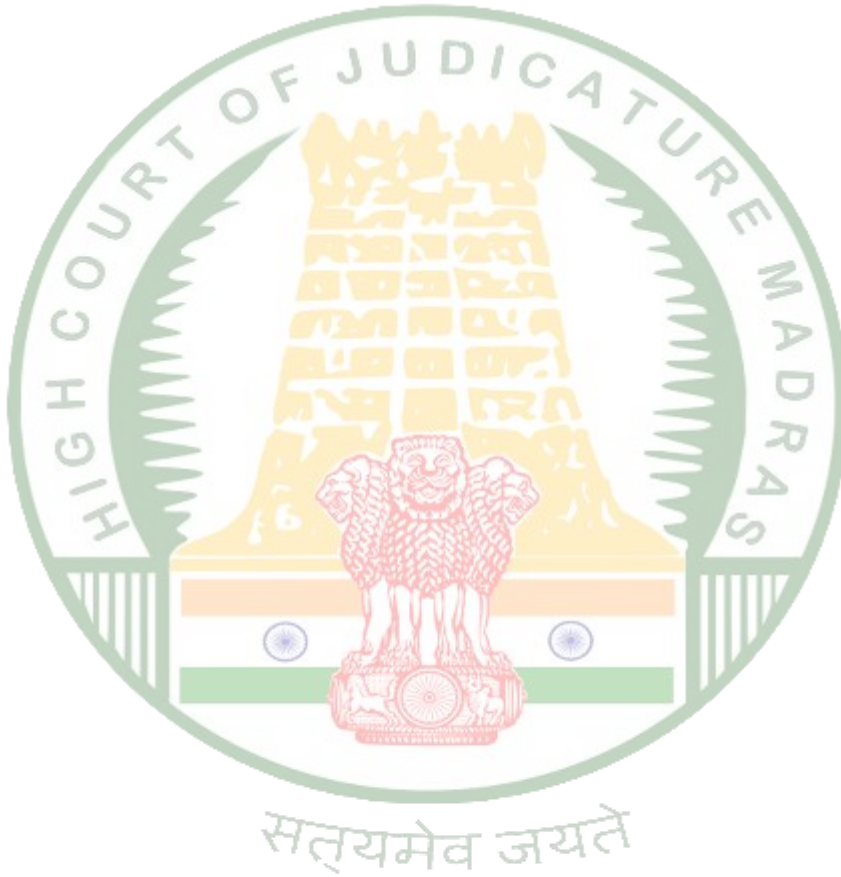
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PL (CO)

A.SK(16.06.2021)



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