



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.36627 OF 2015

AND

M.P.NOS.1 AND 2 OF 2015

P.Selvakumar

...Petitioner

Vs

1. The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore - 641 001.

2. The District Collector,
Coimbatore,
State Bank Road,
Coimbatore - 641 018.

..Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, Calling for the records relating to the impugned Resolution of the 1st respondent / Coimbatore City Municipal Corporation Council No.258 dated 25.10.2013 and quash the same and consequently direct the Respondents to evict the encroachers in the 30 Feet wide Road leading to Kasthuribai Gandhi Nagar, Indira Nagar, AKG Nagar and PSGG Nagar and also to the children going to NGR School, Sarvodaya School within a reasonable period as may be fixed by this Honourable Court.

For Petitioner : Mr.S.N.Ravichandran
For Mr.T.Ranganathan

For Respondent 1 : Mr.P.Navanetha Krishnan
For Mr.S.Saravanan

For Respondent 2 : Mr.M.Rajendiran
Additional Government Pleader

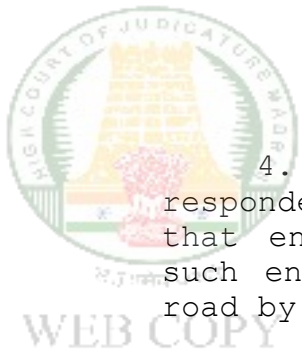


O R D E R

The Resolution passed by the 1st respondent / Coimbatore City Municipal Corporation Council No.258 dated 25.10.2013 is sought to be quashed and further direction is sought for to evict the encroachers in the 30 Feet wide Road leading to Kasthuribai Gandhi Nagar, Indira Nagar, AKG Nagar and PSGG Nagar and also to the children going to NGR School, Sarvodaya School within a reasonable period of time.

2. The writ petitioner is the resident in the Kasthuribai Gandhi Nagar of Varadarajapuram, Coimbatore, for several years. The petitioner is running a Mechanical shop in the said area and a representative of the Kasthuribai Gandhi Nagar Welfare Association. The writ petitioner states that the Kasthuribai Gandhi Nagar is an approved lay out by the Local Planning Authority in Uppiliyapalayam Village coming under Ward No.57 of the Coimbatore City Municipal Corporation. While sanctioning the lay out, the land in S.F.No.75/3 and 76/3 of Uppiliyapalayam has been shown as "Cart Track", a public road. This 30 feet wide public road is the approach road to Kasthuribai Gandhi Nagar and Indira Nagar residents for several years. This road is an approach road for the school children going to NGR Higher Secondary School and Sarvodaya Higher Secondary School. During the year 1990, the encroachers approached the District Magistrate Court, Coimbatore by filing O.S.No.3163 of 1990 for an injunction from evicting them. The suit was dismissed on 24.02.1995 and an appeal in A.S.No.63 of 1996 was filed before the learned II Additional District Judge, Coimbatore. In the First Appeal, an injunction was granted, until they are evicted by due process of law. However, W.P.No.5198 of 1990 was filed in the nature of Mandamus to direct the District Collector to evict the encroachers following the due process of law, the Hon'ble High Court in its order dated 18.08.1998 directed the petitioners to approach the Authorities by making a representation and the Authorities must pass appropriate orders, after hearing both the parties. Accordingly, the petitioner submitted a representation to the District Collector on 12.11.1997 and also to the Commissioner, Coimbatore Corporation. The Assistant Commissioner East Zone, Coimbatore Corporation has requested the Tahsildar to evict the encroachers. However, no action has been taken.

3. The learned counsel for the petitioner relied on the letter of the Tahsildar dated 27.11.1998 addressed to the District Collector stating that the encroachers are in occupation of the Government Poramboke land and in the event of removing the encroachments, the same will be beneficial to the public at large.

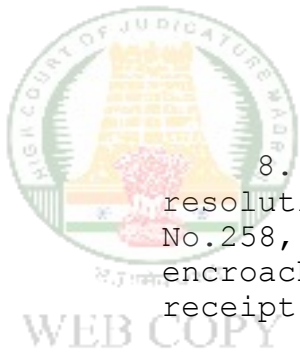


4. The learned counsel appearing on behalf of the 1st respondent/ Corporation also made a submission on instructions that encroachers are in occupation of the poramboke land and such encroachments are causing hindrance for free usage of the road by public at large in that locality.

5. When it is affirmed that the encroachments are blockades for the purpose of usage of road to the public and to the school children, then the authorities competent authorities are bound to evict the encrochers and clear the pathway for the purpose of usage for all. Encroachments are to be removed by following the procedures as contemplated under the Tamil Nadu Land Encroachment Act, 1905. This being the procedures to be followed, the respondents are directed to initiate all steps and remove the encroachments enabling the public to utilise the public road within a period of 3 months from the date of receipt of a copy of this order. The encroachers, if at all landless poor people, then they are at liberty to submit representation to the appropriate authority for an alternate accommodation under any of the Welfare Schemes introduced by the Government. However, encroachments in public roads can never be allowed and such encroachments are causing greater inconvenience to the road users and in the present case, the said road is being utilised by the School children and therefore, the encroachments are to be removed without any lapse of time.

6. The Coimbatore City Municipal Corporation passed a resolution for grant of patta to the encroachers. However, the patta has not been granted by the Competent authorities of the Government, mere resolution passed by the Municipal Corporation will not provide any right to the encroachers, unless such rights are confirmed by the Government by way of issue of patta or otherwise. In the present case, no patta has been issued. Therefore, the resolution has not been acted upon and the authorities competent has not issued patta so far. Thus, the encroachers in the public road are liable to be evicted and road must be put in usage of all.

7. In view of the fact that the Resolution passed by the Corporation has not acted upon, no weightage needs to be given to the said resolution for the purpose of grant of patta. This apart, such Resolutions are passed mostly in certain extraneous consideration and in the present case the resolution passed is affecting the rights of the road users of that locality. When the Municipal Corporation passed the resolution for grant of patta in respect of public road, such resolutions cannot be validated.



8. In view of the facts and circumstances, the impugned resolution passed by the first respondent dated 25.10.2013 in No.258, is quashed and the respondents are directed to evict the encroachers within a period of three months from the date of receipt of a copy of this order.

9. With these directions, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

nti/AP

To

1. The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore - 641 001.
2. The District Collector,
Coimbatore,
State Bank Road,
Coimbatore - 641 018.

+1cc to Mr.T.Ranganathan, Advocate, S.R.No.3192

+1cc to Mr.S.Saravanan, Advocate, S.R.No.3337

+1cc to the Government Pleader, S.R.No.3366

W.P.No. 36627 of 2015

PCH(CO)
RLP(09/02/2022)