



W.P.No.33605 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2022

CORAM

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Petition No.33605 of 2022

K.Palanisamy

.. Petitioner

Vs.

1. The Commissioner
Coimbatore Corporation
Big Bazaar Street
Coimbatore 641 001.

2. The Assistant Town Planning Officer
North Zone Coimbatore Corporation
Gandhipuram, Coimbatore.

.. Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for a writ of Mandamus forbearing the respondents from interfering in the peaceful possession and enjoyment of 30 feet wide private road situated in S.F.No.562 to 565, Ward No.22, Block No.2, Town Survey No.27, Door No.27/A, Sankaralinganar Road, Majara Maniyagaramplayam, Appathakovil Thottam, Ganapathy Village, Coimbatore 641 006, without following due process of law on the basis of representation dated 29.11.2022.



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For the Petitioner : Mr.S.Venkatesh

For the Respondents : Mr.Ferdinand
Standing Counsel

ORDER

(Made by the Hon'ble Acting Chief Justice)

The writ petition has been filed to forbear the respondents from interfering with the peaceful possession and enjoyment of the private road situated in S.F.No.562 to 565, Ward No.22, Block No.2, Town Survey No.27, Door No.27/A, Sankaralinganar Road, Majara Maniyagaramplayam, Appathakovil Thottam, Ganapathy Village, Coimbatore 641 006.

2. According to the petitioner, his father is the owner of the property of an extent of 58½ cents in S.F.No.565, Ward No.22, Block No.2, Town Survey No.27, Door No.27/A, Sankaralinganar Road, Majara Maniyagaramplayam, Appathakovil Thottam, Ganapathy Village, Coimbatore 641 006, by way of registered partition deed. Subsequently, he partitioned the property to his wife, sons and



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daughter by way of a registered deed, in the year 2006. All of them have constructed houses in the said land and also obtained patta on 24.07.2019.

3. While constructing houses, they have formed a private road for their access and the same was approved by the first respondent and it was also entered in the Revenue records. The said private road is maintained by the petitioner and his family members and its both ends are closed by gates.

4. On 28.11.2022, the second respondent issued notice under Section 258 of the Coimbatore Municipal Corporation Act calling upon the petitioner and his family members to remove the encroachment by way of fixing gate in the road belonging to the Corporation within 24 hours, failing which, action would be taken under Section 441 of the Act. Immediately, the petitioner made a representation on 29.11.2022 requesting the respondent Corporation to drop the action initiated by them and thereafter, has come up with this writ petition.



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5. According to learned counsel for the petitioner, the entire property belongs to the petitioner and his family members and that the road, which is alleged to be encroached, is a private road for the use of the petitioner and their family members and not a public road. Therefore, the impugned notice is liable to be quashed.

6. Learned Standing Counsel appearing for the respondent Corporation, relying upon G.O.(Ms.) No.172, Housing and Urban Development [UD4(3)] Department, dated 13.10.2017, contended that all the roads and Open Space Reservation area in the layout, in the instant case, road in question, is gifted to the respondent Corporation, it shall be deemed to have been vested with the concerned local authority. Therefore, the petitioner cannot have any right to claim it as private road.

7. On considering the submissions made on behalf of both the parties and perusing G.O.(Ms.) No.172, Housing and Urban Development [UD4(3)] Department, dated 13.10.2017, we are of the considered opinion that the petitioner has no right to claim the road in



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question as private road, when it is vested with the local authority concerned. Thus, the writ petition fails and the same is dismissed. However, it is made clear that when the respondent Corporation undertakes water pipeline work, no one can raise any objection so long as the water pipeline is laid underneath. There will be no order as to costs. Consequently, WMP No.33061 of 2022 is also dismissed.

(T.R., ACJ.) (D.B.C., J.)
14.12.2022

Index : Yes/No

kpl

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