



WEB COPY



WP NO.6752 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2023

CORAM:

**THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HON'BLE MRS.JUSTICE R.KALAIMATHI**

**WP NO.6752 OF 2023
AND WMP NOS.6823 AND 6824 OF 2023**

Logamani

... Petitioner

Versus

1.The District Collector
District Collector Office
Coimbatore.

2.The Commissioner
Coimbatore City Corporation
Coimbatore.

3.The Inspector General of Registration
No.100, Santhome High Road,
Raja Annamalaipuram, Chennai – 600 028.
(R3 – *suo motu* impleaded by this Court
on 03.03.2023 in W.P.No.6752 of 2023)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned demand cum eviction notice of the 2nd respondent dated 24.01.2023 under Section 238(1) and 441 of Coimbatore Corporation Act and quash the same as illegal and arbitrary and consequently direct the 1st respondent to dispose the petitioner's representation dated 20.02.2023.



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For Petitioner : Ms.P.Arularasi
For Respondents : Mr.N.Velmurugan
Standing Counsel

ORDER

[ORDER OF THE COURT WAS MADE BY S.VAIDYANATHAN, J.]

The present writ petition has been filed by the petitioner to call for the records of the impugned demand cum eviction notice of the second respondent dated 24.01.2023 issued under Sections 258(1) and 441 of the Coimbatore City Municipal Corporation Act and quash the same as illegal and arbitrary and for a consequential direction to the first respondent to dispose of her representation dated 20.02.2023.

2. At the threshold, it needs to be pointed out that though the impugned notice has been issued under Section 258(1) of the Coimbatore City Municipal Corporation Act, the said provision has been wrongly quoted as Section 238(1) in the petition as well as in the typed set of papers. Hence, this Court proceeds to refer to Section 258(1) and not 238(1) as wrongly stated in the petition and typed set of papers.

3. It has been stated that there is no encroachment by the writ petitioner and that the demand notice dated 24.01.2013 issued under Sections 258(1) and 441 of the Coimbatore City Municipal Corporation Act does not



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attract eviction of the petitioner. The respondents contended that sketch at page no.33 of the typed set of papers has been drawn by the petitioner for the purpose of registering the document. In fact, as per the layout, the petitioner has encroached the road and by means of a Sale Deed, the road is said to have been purchased by the petitioner. If the layout clearly shows that the road has been included in the Sale Deed, it is open to the Government to take possession of the land. Needless to mention that it is open to the petitioner to claim compensation from the seller, if the seller has not divulged to the petitioner about selling the road portion to the petitioner by claiming that the said portion is his own.

4. Even though it is stated by the petitioner that the area may be surveyed and encroachment can be removed, we are not inclined to accept the same as even if survey is made as stated by the petitioner, it will only show the entire stretch occupied by the petitioner as per Sale Deed and not the encroached portion of the road as per layout. A part of the road has been purchased by the petitioner, which has also been registered by the Sub Registrar. The said seller can't sell the property belonging to the Government.

5. We make it very clear that before registering a document, the Office of the concerned Sub Registrar, must ensure whether the road width is



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also included in the Sale Deed and that an undertaking shall be made by the seller and the buyer that there is no public property taken on sale, so that it will avoid the buyer encroaching the public properties. It is further made clear that both the buyer and seller must ensure that there is a clause in the Sale Deed to the effect that no public properties like Road, OSR, Waterbody, Park and the like are encroached.

6. We direct the Inspector General of Registration, Tamil Nadu to issue a circular to all the Registering Authorities to ascertain the existence of such clause in the Sale Deed before registration of any document.

7. In fine, the writ petition is dismissed with the above observations and directions. No costs. Consequently, connected miscellaneous petitions are closed.

[S.V.N., J.] [R.K.M., J.]

03.03.2023

(2/2)

Internet : Yes/No
Speaking / Non-speaking order
TK



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To

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