



WEB COPY



W.P.No.13133 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.13133 of 2023

Saadiq Basha

... Petitioner

.Vs.

1.The Commissioner
Corporation of Coimbatore
Coimbatore-641 001.

2.The Assistant Commissioner
South Zone
Corporation of Coimbatore
Palakkad Main Road
Kuniyamuthur Road
Coimbatore.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to remove the fencing and signboard erected by the second respondent in the petitioner's property in Survey No.299/1B situated at Kurichi Village, Coimbatore Taluk and District by considering the petitioner's representation dated 04.03.2023, within the time frame to be fixed by this Court.

For Petitioner

Mr.C.Munusamy

For Respondents

Mr.Najeeb Usman Khan
Standing Counsel



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ORDER

This writ petition was filed for a direction to the respondents to remove the fencing and signboard erected in the property in Survey No.299/1A at Kurichi Village, Coimbatore, by considering the representation made by the petitioner.

2.When the matter came up for admission on 26.04.2023, this Court passed the following order:

Mr.Najeeb Usman Khan, learned Standing Counsel takes notice on behalf of the respondents.

2.The grievance of the petitioner is that the 2nd respondent viz., the Assistant Commissioner of the Coimbatore Corporation has put up a fencing and has erected a signboard in the property belonging to the petitioner, as if it belongs to the Coimbatore Corporation. The petitioner has made a representation on 04.03.2023, requesting the Corporation to remove the fencing and also the signboard. Since the same was not considered the present writ petition has been filed.

3.The learned Standing Counsel seeks for sometime to take instructions in this case. Post this case under the caption "for orders"on 08.06.2023.

3.When the matter was taken up for hearing today, the counter affidavit of the 1st respondent was filed. The relevant portions in the counter affidavit are extracted hereunder:

“4. I state that the respondent Corporation has fenced around and erected the signboard in the vacant land, displaying that "Coimbatore Corporation Ward No.85" since it is a reserved site for public purpose belonging



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to the respondent Coimbatore as per the approved layout LPDM/DDTP (CN&R) No.13/72, which lies in SF No.298, 299/1, 741/1 of Kurichi village of Coimbatore Municipal Corporation.

5. I state that it is an approved layout, as per the LPDM/DDTP (CN&R) No.13/72 and public purpose reservation has been made in SF. No.298, 299/1, 741/1 of Kurichi village. This layout was formed during the year 1972 when Kurichi was a Town Panchayat. During the year 2011 delimitation, the erstwhile Kurichi municipality was merged with Coimbatore corporation. Various High court orders confirmed that the custodian of the reserved site should be the concerned local body even it was not handed over to the local body. Hence, this respondent corporation is the custodian for this reserved site.

6. I state that the averments that petitioner is in possession an enjoyment of the property right from the date of purchase in the year 2012, it is pertinent and relevant to note that petitioner vendor's husband purchased the property in question as early as on 22.01.1999 and the same was settled to his wife in the year 2012 are unknown facts respondent.

7. I state that the petitioner has purposely and knowingly purchased the part of the plot which is reserved for public purpose. It is pertinent to state that in the schedule of property of the petitioner's documents, no site number is mentioned. It proves that it is reserved site belonging to the respondent corporation. Since the part of the reserved site is occupied and encroached by the petitioner by way of RCC building construction to a measurement of 54'6" x 28 = 1526 sq.ft the respondent corporation has issued notice to the petitioner under Section 258, 441 of Coimbatore City Municipal Corporation Act 1981 on 06.03.2023 in Roc.No:256/2018/H1/S, to clear the encroachment within 15 days limit.

8. I state that a written representation was given by the petitioner to the respondents on 04.03.2023 through a registered post and the same was duly served upon them on 07.03.2023 was received by respondent Corporation. As per



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the rules and law in force, petitioner has encroached and occupied the public purpose reservation site as per the approved layout LPDM/DDTP (CN&R) No.13/72 belonging to respondent Corporation and hence the encroachment made by the petitioner has to be removed ”.

4.Heard Mr.C.Munusamy, learned counsel for the petitioner and Mr.Najeeb Usman Khan, learned Standing Counsel for the respondents.

5.The learned counsel for the petitioner submitted that the subject property does not fall within the place reserved for public purpose and that the respondent will have to survey and specifically identify the property that falls within the reserved area. Per contra, the learned Standing Counsel appearing on behalf of the Coimbatore Corporation submitted that the property for which the claim is made by the petitioner, falls very much within the place reserved for public purpose. It was further submitted that the Corporation has already issued a notice to the petitioner under the relevant provisions of the Coimbatore City Municipal Act, for clearing the encroachment made by the petitioner and the petitioner has also given the response. Hence, it was submitted that the claim made by the petitioner will also be considered and a final decision will be taken on the notice that has already been issued to the petitioner.

6.In the considered view of this Court, the Coimbatore Corporation has already initiated proceedings for eviction of the petitioner. The petitioner has also given a representation. It is left open to the petitioner to take a stand before the respondent Corporation and the same will be considered at the time of enquiry and a final decision will



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be taken by the Coimbatore Corporation in the pending enquiry initiated under the Coimbatore City Municipal Act and a final decision shall be taken within a period of eight weeks from the date of receipt of copy of this order.

7.This writ petition is disposed of in the above terms. No costs.

20.06.2023

KP

Internet : Yes/No

Index : Yes/No

Neutral Citation :Yes/No

To

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