



WEB COPY



W.P.No.13701 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2023

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**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MRS. JUSTICE N.MALA**

**W.P.No.13701 of 2023
and W.M.P.Nos.13373 & 13375 of 2023**

K. Devasenapathy

... Petitioner

Vs.

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

2. The Assistant Commissioner,
Central Zone, Coimbatore City Municipal Corporation,
Coimbatore 641 001

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 2nd respondent issued without any Reference Number and date (served to the petitioner on 21.04.2023) and quash the same and consequently to direct the respondents to consider the case of the petitioner by affording reasonable opportunity to him, similar to other shop owners.

For Petitioner : Mr.T.Ranganathan

For Respondents : Mr.Najeeb Usman Khan,
Standing Counsel

ORDER



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(Order of the Court was made by J.NISHA BANU, J.,)

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Seeking to quash the impugned notice issued by the 2nd respondent and for a further consequential direction to the respondents to consider the case of the petitioner, the petitioner has preferred the present writ petition.

2. It is averred in the writ petition that the petitioner is an allottee of shop No.1 at Coimbatore Corporation Commercial Complex at Krishnasamy Road (South). Having allotted the said shop in the year 2009 at monthly rent of Rs.9,500/-, the petitioner has been in continuous occupation of the said premises for the last 13 years with the enhancement of monthly rent by the respondent Corporation as Rs. 10,925/- per month during 2012, Rs.12,564/- per month during 2015-18 and as Rs.14,489/- per month during 2018-21. The said rent amount of Rs.14,489/- along with service charge of Rs.2,601/- per month has been paid to the Coimbatore City Municipal Corporation till March 2023.

3. According to the learned counsel for the petitioner, the petitioner is doing the sale of used cars and therefore, he has parked his own vehicles and also his customers' vehicles in front of his shop. The space between the road



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and the shop has been utilized by all the shop vendors of the Coimbatore Corporation Commercial Complex at Krishnasamy Road (South). However, the 2nd respondent has issued a notice without any reference number or date, directing the petitioner to remove the encroachment within 5 days from the date of receipt of the Notice as under Section 258(1) and 441 of the Coimbatore City Municipal Corporation Act 1981.

4. It is the further contention of the learned counsel for the petitioner that when similarly placed other shop owners are utilizing the entire stretch of the road, the 2nd respondent has not issued any Notice to them, whereas the impugned notice of the 2nd Respondent has been issued to the petitioner alone, which is an outcome of malafide exercise and therefore, the same is liable to be quashed. Hence, the learned counsel for the petitioner prayed for allowing the writ petition.

5. Mr.Najeeb Usman Khan, learned Standing Counsel appearing for the respondent Corporation produced the counter affidavit filed on behalf of the first respondent wherein it has been stated that Brooke Bond road in which the Corporation's commercial complex is situated, is one of the busiest



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roads in the Coimbatore city and the junction of Mettupalayam road, Brooke bond road and Kikkani School road is witnessing heavy vehicular traffic. There are already three schools, Brooke Fields mall and a Hospital situated along the above said roads. As per the Coimbatore city Police records, 7 fatal accidents have taken place along the road where the petition mentioned shop is situated.

6. The learned standing counsel also brought to the attention of this Court that the petitioner has sub-let the above shop to one Mr. Ashan Ali, who is running the business of selling used cars and the vendor is in the habit of parking the cars meant for sale, both in the front area and sides of the shop causing hindrance to the public passage and transport. When the Corporation officials inspected the above premises on 19.04.2023, they found that a number of cars were parked along the road side, thereby blocking the free flow of traffic, necessitating the issuance of notice. As a result of the spot inspection made, the vendor Mr.Ashan Ali was issued with notice on 19.04.2023.



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7. Moreover, the learned standing counsel would submit that the petitioner was a defaulter in paying monthly rent due to the respondent Corporation. As per Coimbatore Corporation, vide receipt nos.0358626 and 0358627 dated 28.06.2023, the petitioner has remitted the monthly rent and the other fees were remitted only after filing of the present Writ Petition and therefore, prayed for dismissing the writ petition.

8. Heard the learned counsel for the petitioner and the learned standing counsel appearing for the respondent Corporation and perused the materials placed before this Court.

9. This Court after perusing the records would infer that even though the petitioner has filed an undertaking before this Court stating that there will be no hindrance to the vehicular traffic from the petitioner's side, the averments made in the counter affidavit by the respondents stating that 7 fatal accidents have taken place along the road where the petition mentioned shop is situated, is a matter of serious concern. Therefore, this Court is of the view that the respondent Corporation shall take appropriate enforcement

J. NISHA BANU, J.
and



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N.MALA, J.

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action as against the petitioner, if any encroachment is being made by the petitioner, in the manner know to law.

9. With the above directions, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

(J.N.B, J.)

(N.M, J.)

25.09.2023

Index : Yes / No

Internet : Yes / No

Speaking order/Non-speaking order

Neutral Citation : Yes / No

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To:

1. The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore 641 001
2. The Assistant Commissioner,
Central Zone, Coimbatore City Municipal Corporation,
Coimbatore 641 001

Order made in

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