



W.P.No.17665 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.P.No.17665 of 2023

K.Gokilan

.. Petitioner

Vs

The Commissioner,
Coimbatore Municipal Corporation,
Town Hall,
Coimbatore.

.. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records pertaining to the notice dated 2.6.2023 issued by the respondent to the petitioner and quash the same.

For the Petitioner : Mr.A.E.Ravichandran

For the Respondent : Mr.D.R.Arunkumar
Standing Counsel



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ORDER

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Heard Mr.A.E.Ravichandran, learned counsel for the petitioner,
and Mr.D.R.Arunkumar, learned Standing Counsel for the respondent.

2. The petitioner assails the notice dated 2.6.2023 issued by the
respondent Corporation.

3. We had adjourned the matter yesterday so as to enable the
petitioner to place on record the document to show that the
construction is authorised. No construction permission is placed on
record.

4. It is the contention of learned counsel for the petitioner that
the petitioner is paying taxes for more than 35 years and the land
belongs to the petitioner. The petitioner is issued with patta. However,
notice was issued by the respondent Corporation to suggest that the
land belongs to the Corporation and the petitioner has encroached
upon the Corporation land.



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5. According to learned counsel for the petitioner, if it is Corporation property as is claimed by the Corporation, then the provisions of Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 are applicable. The respondent Corporation has relied on the Repeal Act.

6. Learned counsel for the petitioner relies upon a judgment of a Full Bench of this Court in a case of *Ramaraju v. The State of Tamil Nadu, rep. by its Secretary to Government, Revenue Department, Fort St. George, Chennai and others*, reported in (2005) 2 CTC 741, to contend that if the Corporation claims that the property would be of its own and the alleged encroachment is not on road or road side or street margins, then they have to resort to the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975.

7. In the present case, according to learned counsel for the Corporation, the encroachment is on the public park. If the alleged land is reserved for public purpose, no person has got right to erect a construction.



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8. A dispute of title exists. The dispute of title can only be decided by a civil court. If there is a cloud over the title, then, except the civil court, no other court can have jurisdiction to decide the title.

9. In a civil suit that may be filed for declaration of title, the petitioner can claim all consequential reliefs available to the petitioner.

10. Be that as it may, as we have already observed that the petitioner claims to be the owner of the property in question and, according to the respondent Corporation, it is the Corporation property and reserved for park. If the property is reserved for park, then no construction can be done on it. Parks and playgrounds are the lungs of the city. As there is already a cloud over the title of the petitioner, it is appropriate for the civil court to decide the dispute.

11. All the consequential reliefs can be claimed by the petitioner in a suit for declaration of title.

12. In view of the above, with liberty to the petitioner to avail



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the alternate remedy before the civil court, the writ petition is disposed of. It is made clear that we have not dealt with the merits of the contentions.

There will be no order as to costs. Consequently,
W.M.P.Nos.16763 and 16764 of 2023 are closed.

(S.V.G., CJ.)

(P.D.A., J.)

15.06.2023

Index : Yes/No
Neutral Citation : Yes/No
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To

The Commissioner,
Coimbatore Municipal Corporation,
Town Hall,
Coimbatore.



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THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESSAVALU, J.

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