



WEB COPY



W.P.No.34695 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.34695 of 2024

and

W.M.P.No.37629 of 2024

in

W.P.No.34695 of 2024

B.Suresh Kumar
S/o.K.Balusamy

... Petitioner

Vs.

1. The District Collector
Office of the District Collectorate
Coimbatore - 641 018.

2. The Commissioner
Coimbatore Corporation
Coimbatore.

... Respondents

Prayer :

Writ Petition filed under Article 226 of The Constitution of India
praying to issue a Writ of Certiorarified Mandamus to call for the records
relating to the impugned order in Na.Ka.No.2024/H1(Va) dated 09.08.2024

Page Nos.1/6



W.P.No.34695 of 2024

passed by the 2nd respondent, quash the same and consequently, direct the respondents herein not to interfere with the petitioner's peaceful possession and enjoyment of the plot bearing No.39 situate at S.F.Nos.341 and 342, Santhi Nagar, Sowripalayam Village, Ward No.28, North Zone, Coimabtoire Corporation.

For Petitioner : Mr.K.Govi Ganesan
For Respondents : Mr.T.K.Saravanan
Government Advocate, for R1
Mr.D.R.ARun Kumar
Standing Counsel, for R2

ORDER

[Order of the Court was made by **K.RAJASEKAR, J.,**]

This writ petition has been filed challenging a notice dated 09.08.2024 passed by the second respondent, calling upon the writ petitioner to remove the encroachment in 'S.Nos.341 and 342, Ward No.28, converted into an approved layout called Shanthi Nagar, Sowripalayam Village, North Zone, Coimbatore' {hereinafter 'subject property' for the sake of brevity, convenience and clarity}.

2. The learned counsel for the writ petitioner submitted that the



W.P.No.34695 of 2024

subject property was allotted in favour of writ petitioner's mother in their family partition and they were in possession and enjoyment of the same for a very long period. The learned counsel further submitted that a gift deed for formation of Road was executed by Shanthi Nagar Site Owners-Association in favour of the Coimbatore City Municipal Corporation and the writ petitioner along with four others filed a suit in O.S.No.1314 of 2000 on the file of the III Additional District Munsif Court, Coimabtoe, to declare the gift deed as null and void and for permanent injunction and a decree has been obtained in their favour and hence, the impugned notice is not sustainable.

3. Issue notice to respondents.

4. Mr.T.K.Saravanan, learned Government Advocate accepts notice for the first respondent. Mr.D.R.Arun Kumar, learned Standing Counsel accepts notice for second respondent.

5. The learned counsel for second respondent submits that since the



W.P.No.34695 of 2024

road portion of the approved layout was encroached by the writ petitioner, the impugned notice was issued. The learned counsel for second respondent further submitted that so far no reply has been received from the writ petitioner and further action will be taken by the respondents under Section 128(1)(b) of 'the Tamil Nadu Urban Local Bodies Act, 1998 (Tamil Nadu Act 9 of 1999)' {hereinafter 'TNULB Act' for the sake of brevity}.

6. A careful perusal of proviso to Section 128(1)(b) of TNULB Act brings to light that the Commissioner is a competent authority to issue notice for removal of encroachment. Admittedly, the impugned notice has been issued by the Commissioner, Coimbatore Corporation to the writ petitioner but he has not yet submitted his objections.

7. Considering the submissions made on both sides, we are inclined to dispose of the writ petition with the following directions :

(a) The writ petitioner shall send a representation / reply in response to the impugned notice within seven days from today i.e., on or before 03.12.2024;



W.P.No.34695 of 2024

(b) After receiving the representation from the writ

petitioner, the Commissioner shall pass orders on its own merits and in accordance with law;

(c) We make it clear that we are not expressing any view or opinion on the merits of the matter;

(d) The writ petitioner is at liberty to submit all his defence before the Commissioner by way of representation.

With the above directions, the Writ Petition is disposed of. Consequently, connected writ miscellaneous petition is closed. There shall be no order as to costs.

(M.S.,J.)

(K.R.S.,J.)

26.11.2024

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

mk



WEB COPY



W.P.No.34695 of 2024

M.SUNDAR, J.,

and

K.RAJASEKAR, J.,

mk

To

1. The District Collector
Office of the District Collectorate
Coimbatore - 641 018.
2. The Commissioner
Coimbatore Corporation
Coimbatore.

W.P.No.34695 of 2024

26.11.2024

Page Nos.6/6