



W.P. Nos.22762 and 22767 of 2024

Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of mandamus forbearing the respondents, their men, agents, servants and any person claiming under them or acting on their behalf, from in any manner interfering with the peaceful possession and enjoyment of the petitioners, of the property, morefully described in the schedule to the writ petition, unless by following due process of law.

Schedule mentioned properties in W.P.No.22762 of 2024

Schedule A

All that piece and parcel of vacant land situated in measuring an extent of 6,400 sq. ft. comprised in S.No.134/3, situated at Uppilipalayam Village, Coimbatore South Taluk, Sub Registration District of Singanallur, Revenue District of Coimbatore and being bounded on the:

North by : Property owned by Krishnaswamy Naidu
South by : Plot No.35
East by : Property owned by 1st petitioner (S. Subhashini)
West by : 30 feet road

Schedule B

All that piece and parcel of vacant land situated in measuring an extent of 3,200 sq. ft. comprised in S.No.134/1, 134/2, 134/3, 134/4, 135/1, 135/2, 135/3 and 135/4 situated at Uppilipalayam Village, Coimbatore South Taluk, Sub Registration District of Singanallur, Revenue District of Coimbatore and being bounded on the:



WEB COPY



W.P. Nos.22762 and 22767 of 2024



W.P. Nos.22762 and 22767 of 2024

WEB COPY

North by : Property owned by Krishnaswamy Naidu
South by : Plot No.34
East by : Property owned by 1st petitioner
(S. Subhashini) & 2nd petitioner (A. Umapathy)
West by : 30 feet road

Schedule mentioned properties in W.P.No.22767 of 2024

Schedule A

All that piece and parcel of vacant land situated in measuring an extent of 6,400 sq. ft. comprised in S.No.134/3, situated at Uppilipalayam Village, Coimbatore South Taluk, Sub Registration District of Singanallur, Revenue District of Coimbatore and being bounded on the:

North by : Property owned by Krishnaswamy Naidu
South by : Plot No.35
East by : Property owned by 2nd petitioner(S. Subhashini)
West by : 30 feet road

Schedule B

All that piece and parcel of vacant land situated in measuring an extent of 3,200 sq. ft. comprised in S.No.134/1, 134/2, 134/3, 134/4, 135/1, 135/2, 135/3 and 135/4 situated at Uppilipalayam Village, Coimbatore South Taluk, Sub Registration District of Singanallur, Revenue District of Coimbatore and being bounded on the:



WEB COPY



W.P. Nos.22762 and 22767 of 2024

North by : Property owned by Krishnaswamy Naidu
South by : Plot No.34
East by : Property owned by 1st petitioner (A. Umapathy)
and 2nd petitioner (S. Subhashini)
West by : 30 feet road

For petitioners
in both WPs

Mr. B. Arvind Srevatsa

For RR 1 to 4
in both WPs

Mr. J. Ravindran, Addl. Adv. Gen.
assisted by Mr. K.M.D. Muhilan
Standing Counsel

For R5
in both WPs

Mr. P.K. Harinath Babu

COMMON ORDER

[made by M.SUNDAR, J.]

This common order will now dispose of the captioned two main 'writ petitions' (hereinafter 'WPs' for the sake of brevity) and the captioned two WMPs thereat.

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 09.01.2025 which reads as follows:

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 09-01-2025

Page Nos.5/31



W.P. Nos.22762 and 22767 of 2024

CORAM
THE HONOURABLE MR JUSTICE M. SUNDAR
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

WP NO. 22762 of 2024

AND

WMP NO. 24802 OF 2024, WMP NO. 24803 OF 2024, WP NO. 22767 OF 2024, WMP
NO. 24798 OF 2024, WMP NO. 24799 OF 2024, WMP NO. 30646 OF 2024, WMP NO.
30647 OF 2024

S.Subhashini

W/o A. Umapathy Residing At No 3 Sairam Apartments 19/17 3rd
Main Road Gandhi Nagar Adayar Chenani 600 020 and another

Petitioner(s)

Vs

The Commissioner

Coimbatore Municipal Corporation Coimbaotre 641 001 and 4 Others

Respondent(s)

For Petitioner(s):

Mr. B.ARVIND SREVATSA

For Respondent(s):

MR.K.M.D.MUHILAN SC FOR RR1 TO 4

Mr. P.K. HARINATH BABU FOR R5

WP NO. 22767 of 2024

For Petitioner(s):

Mr. B.ARVIND SREVATSA

For Respondent(s):

MR.K.M.D.MUHILAN SC FOR RR1 TO 4

Mr. P.K. HARINATH BABU FOR R5



WEB COPY



W.P. Nos.22762 and 22767 of 2024

ORDER

(Order of the Court was made by the Hon'ble M.Sundar J.)

Prior to the captioned writ petitions, writ petitioners came to this Court by way of two writ petitions, namely W.P.Nos.19168 and 19174 of 2024. Both these writ petitions came to be disposed of by a Division Bench in and by an order dated 12.07.2024, which has been reported in Neutral Citation of this Court in **2024:MHC:2678**. The operative portion of this 12.07.2024 order is contained in paragraph 10 and the same reads as follows:

'10. In the light of the narrative thus far, the following order is passed :

(i) Impugned notices both bearing reference e/f/vz;/11243/2021/vr;1(fp) issued in the June of 2024, signed by R1 (the Commissioner, Coimbatore Municipal Corporation, Coimbatore - 641 001) on 24.06.2024 are now to be treated as 'Show Cause Notices' {hereinafter 'SCNs' for the sake of brevity} within the meaning of Section 128(1)(b) of TNULB Act;

(ii) Writ petitioners shall be treated as noticees and writ petitioners shall send their responses to SCNs within seven days from today i.e., on or before 19.07.2024;

(iii) Thereafter, R1 shall consider the responses and take a call on its own merits and in accordance with law, untrammelled by this order;

(iv) Take a call means either drop the proceedings or proceed with the removal of encroachment and it includes any other action permissible in law i.e., more particularly, TNULB Act and TNULB Rules therein;

(v) In the light of proviso to Section 128(1)(b) of TNULB Act, if any representation is received within seven days window provided supra, R1 shall consider the same before passing final orders;



WEB COPY



W.P. Nos.22762 and 22767 of 2024

(vi) *We make it clear that all the rights and contentions of both sides are preserved qua Statutory drill under TNULB Act / TNULB Rules and further proceedings, if any and if that be so;*

(vii) *While considering the responses to impugned notices which have now become SCNs, we make it clear that it is open to R1 to hold personal hearing, if deemed necessary which in turn will depend on the nature of responses. We also actually make it clear for the sake of specificity that as it is not imperative for R1 to hold personal hearing and it is only discretionary and it will depend on the nature of responses to SCNs. This limb is owing to language in which Section 128(1)(b) of TNULB Act and proviso thereat are couched as the same only provide for being show caused and does not make for personal hearing statutorily imperative.'*

2. Today, Mr.B.Arvind Srevatsa, learned counsel for writ petitioners in both captioned writ petitions submits that the writ petitioners sent a representation dated 19.07.2024, both by hand and by Registered Post with acknowledgment due. Learned counsel submits that this representation was handed over in the Office of R1 on 19.07.2024. In this regard, learned counsel draws our attention to paragraph 28 of the writ affidavit which reads as follows:

'28. I humbly submit that in compliance with Paragraph No.10(ii) of the Order dated 12.07.2024 passed in W.P.No.19168 of 2024 and 19174 of 2024, the Petitioners have submitted their response to the Show Cause Notice along with Annexures, on 19.07.2024, by hand and by registered post with acknowledgment due (RPAD).'

3. Learned counsel also placed reliance on a copy of the 19.07.2024 representation containing what according to writ petitioner is an acknowledgment in first page and a scanned reproduction of the representation with acknowledgment (in left hand side bottom of first page) is as follows:



WEB COPY



W.P. Nos.22762 and 22767 of 2024

86

BY HAND DELIVERY / SPEED

Date: 19th July 2024

From,

S. Subhashini
W/o. M.A. Umashy
Residing at:
No.8, Subban Apartments,
19/17, 3rd Main Road,
Gandhi Nagar, Adyar,
Chennai - 600 020.

To,

1. The Commissioner,
Coimbatore Municipal Corporation
Coimbatore - 641 001,
2. The Assistant Commissioner
East Zone,
Coimbatore Municipal Corporation,
Coimbatore - 641 001.
3. The Assistant Executive Engineer (Planning)
East Zone,
Coimbatore Municipal Corporation,
Coimbatore - 641 001.

REPLY NOTICE

Ref. Slated Court Notice dated 07.07.2024.

Sir,

I state that on 02.07.2024, I received a Notice signed by you on 24.06.2024, bearing S.No. 11943/2021/w/1(a), stating that there is an alleged encroachment of 673 sq.m in the property situated at S.No. 134/7 in Uppilipalayam village, Coimbatore South Taluk in the said

Subhashini



WEB COPY

81

2

below, I have been called upon to remove the alleged encroachment by referring to an alleged 1983 agreement, which states as follows "1983 இல் மாவட்டப் பொதுமன்றம் கங்கு நீர் உரிமை வழங்கியிருந்தது. இவ் 2007 டி அக்டோபர் குடியேற்றம் அங்கீகரிக்கப்பட்டது. மேலும் 2007 இல் அக்டோபர் 11-இல் கங்கு நீர் உரிமை வழங்கியிருந்தது."

I state that challenging the above arbitrary issuance of the notice dated 24.06.2024 issued by No.1 of you bearing S.S.No. 11243/2021/nd114. I had filed W.P. No.19168 of 2024 before the Hon'ble High Court of Madras for the following relief:

"It is therefore prayed that this Hon'ble Court may be pleased to issue a Writ of CERTIORARI or any other Writ or order in the nature of Writ, to call for the records of the 1st Respondent, leading to the issuance of the Order bearing S.S.No. 11243/2021/nd1(s) dated 24.06.2024 and quash the same and pass such other suitable order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and thus render justice."

I state that the above W.P. No. 19168 of 2024 filed by me came up for hearing before the Hon'ble Madras High Court on 12.07.2024 and this Hon'ble Court after hearing all the parties was pleased to dispose of the above Writ Petition vide order dated 12.07.2024. A copy of the order dated 12.07.2024 passed in W.P. No. 19168 of 2024 is herewith filed and the same may kindly be read as part hereof. The relevant portion of the order dated 12.07.2024 is extracted below:

- "10. In the light of the narrative thus far, the following order is passed:
- a) Impugned notices both bearing reference S.S.No. 11243/2021/nd1(s) issued in the June of 2024, signed by R1 (the

Subhashini



WEB COPY

88

Commissioner, Coimbatore Municipal Corporation, Coimbatore - 641 001) on 29.06.2024 are now to be treated as 'Show Cause Notices' (hereinafter 'SCNs' for the sake of brevity) within the meaning of Section 128(1)(b) of TNULB Act.

- (ii) Writ petitioners shall be treated as noticees and writ petitioners shall send their responses to SCNs W.P.Nos. 19168 & 19174 of 2024 within seven days from today i.e., on or before 19.07.2024;*
- (iii) Thereafter, R1 shall consider the responses and take a call on its own merits and in accordance with law, untrammelled by this order;*
- (iv) Take a call means either drop the proceedings or proceed with the removal of encroachment and it includes any other action permissible in law i.e., more particularly, TNULB Act and TNULB Rules therein.*
- (v) In the light of proviso to Section 128(1)(b) of TNULB Act, if any representation is received within seven days window provided supra, R1 shall consider the same before passing final orders;*
- (vi) We make it clear that all the rights and contentions of both sides are preserved qua Statutory drill under TNULB Act / TNULB Rules and further proceedings, if any and if that be so;*
- (vii) While considering the responses to impugned notices which have now become SCNs, we make it clear that it is open to R1 to hold personal hearing, if deemed necessary which in turn will depend on the nature of W.P.Nos. 19168 & 19174 of 2024 responses. We also actually make it clear for the sake of specificity that as it is not imperative for R1 to hold personal hearing and it is only discretionary and it will depend on the nature of responses to SCNs. This limb is owing to language in which Section 128(1)(b) of TNULB Act and proviso thereto are couched as the same only provide for being show caused and does not make for personal hearing statutorily imperative.*

Captioned WPs are disposed of vide this common order with the preservation of rights in the aforesaid manner and observations / directions as above. Consequently, captioned Writ Miscellaneous Petitions thereat are disposed of as closed. There shall be no order as to costs.

Subhashini



WEB COPY

89

I state that in compliance with the above order dated 12.07.2024 passed in W.P. 19168 of 2024 by the Hon'ble Madras High Court, I am issuing the present reply notice in response to your show cause notice bearing reference S.A.No. 11243/2021/est[8] issued in the June of 2024, signed by No.1 of you (the Commissioner, Coimbatore Municipal Corporation, Coimbatore - 641 001) on 24.06.2024, I state as follows:

1. I state that myself and my husband (Mr. A.Umapathy) are the absolute owners of the property bearing Survey No.134/3 in Uppilpalayam village, Coimbatore South Taluk, measuring an extent of 6400sq.ft., having acquired the same vide registered sale deed dated 16.04.2010 registered as Document No.3115 of 2010 in the Office of the Sub-Registrar, Singanailur.
2. I humbly submit that I am the absolute owner of the property bearing Survey Nos. 134/1, 134/2, 134/3, 134/4, 135/1, 135/2, 135/3 and 135/4 situated in Uppilpalayam village, Coimbatore South Taluk, measuring an extent of 3,200 Sq.ft., having acquired the same vide registered Sale Deed dated 26.08.2011 registered as Document No.8394 of 2011 in the Office of the Sub-Registrar, Singanailur. I state that the above properties acquired vide sale deeds dated 16.04.2010 and 26.08.2011 are collectively referred to as "Subject Properties" for the sake of brevity and convenience.

Subhashini



WEB COPY

90

3. I state that in the subject column that in the 'Subject' column of the Show Cause Notice dated 24.06.2024 issued by No. 1 of you, there is reference to alleged encroachment of an extent of 673 Square Meter (i.e., 7244 Sq. Ft.). However, the notice does not specifically refer anywhere as to which specific portion of land is alleged to be in encroachment.
4. I state that we have been in the absolute, joint, continuous and uninterrupted possession and enjoyment of the above property from the date of purchase till date. I state that we are law abiding citizens and we have been paying our public and statutory dues regularly without any default.
5. I state that in the year 2006, our predecessor's predecessor in title, had applied and obtained regularization for an extent of 8400 Sq.ft., forming part of Survey Nos. 134/3 Part since the same was unapproved. The Regularization Order has been passed by the 2nd Respondent vide proceedings bearing S.A.No: 9889/2006/A.1 dated 27.12.2006.
6. I state that the Regularization Order dated 27.12.2006 has been passed after examining all the documents of title. Thereafter, we have purchased the extent of 6,400 Sq. Ft., under Sale Deed dated 16.04.2010 and the extent of 3,300 Sq. Ft., under the Sale Deed dated 26.08.2011. As on date of our purchase, the subject property

Subhashini



WEB COPY



W.P. Nos.22762 and 22767 of 2024

91

6

was regularized and there was no issue or question of any public place or encroachment.

7. I state that the flow of title of the properties purchased vide sale deeds dated 16.04.2010 and 26.08.2011 are detailed below:-

- a) Sale Deed executed Vela Konar in favour of one Saama Naidu S/o. Venkatasamy Naidu vide Sale Deed dated 21.03.1932 bearing Doc. No. 1137 of 1932 for an extent of 2 Acres 69.37 cents comprised in S.No. 134/3, 135/4.
- b) Sale Deed executed by Rama Konar S/o. Sukkida Konar in favour of one Saama Naidu S/o. Venkatasamy Naidu vide Sale Deed dated 21.03.1932 bearing Doc. No. 1095 of 1932 for an extent of 3 Acres 53 cents comprised in S.No. 135/2, 134/2, 134/4, 137/1.
- c) Sale Deed executed by daughters of Mari Konar namely one Nerlakasi along with one Ramakasi in favour of one Nanjammal W/o. Subba Konar vide Sale Deed dated 16.04. 1932 bearing Doc. No. 2487 of 1932 for an extent of 2 Acres 36 cents comprised in S.No. 135/3, 135/4.
- d) Sale Deed executed by one Nanjammal W/o. Subba Konar in favour of one Saama Naidu S/o. Venkatasamy Naidu vide Sale Deed dated 30.04.1932 bearing Doc. No. 1681 of 1932 for an extent of 2 Acres 36 cents comprised in S.No. 135/3, 135/4.
- e) Sale Deed executed by 1. Mrs. Chinnammal W/o. Palani Konar, 2. Narayana Konar S/o. Palani Konar, 3. Arumugam konar (M) S/o. in favour of one Saama Naidu vide Sale Deed dated 14.06.1932 bearing Doc. No. 2473 of 1934 for an extent of 3 Acres 60 cents comprised in S.No. 134/3, 135/4.

Subhashini

P:



WEB COPY

92

7

- f) Deed of Partition of property between [Late] Sri.V.Sama Naidu and late V. Krishnama Naidu, document No. 2838/1941 dated 21.07.1941 wherein Krishnama Naidu was bequeathed with 6 acres of land out of the total 12.18 Acres.
- g) Sale deed dated 24.08.2007 executed by M. Saminathan and Mrs. Valliammal represented by their Power of Attorney Agent Mr. A. Selvaraj (GPOA bearing Doc. No. 332 of 2003 dated 22.08.2003) in favour of Mrs. S. Gnanam for an extent of 1,200 Sq.ft., comprised in Survey Nos. 134/1 to 4, 135/1 to 4, registered as Document No. 6649 of 2007 on the file of the SRO, Singanailur.
- h) Sale deed executed by Kannammal, Sathya Siewaraj, Vanthamani, Janarthanan represented by their Power of Attorney Agent Mr. M.Selvaraj (GPOA bearing Doc. No. 162 of 2002 dated 15.05.2002) in favour of Mr.S. Arputharaj in respect of the property measuring an extent of 8400sq.ft., comprised in Survey No. 134/3. Registered as Document No. 7621 of 2007 on the file of the SRO, Singanailur.
- i) Sale deed executed by S.Arputharaj in favour of Mr. Umapathy and Mrs. Subhashini in respect of the property situated in Uppilipalayam village, Coimbatore South Taluk, measuring an extent of 8400sq.ft., comprised in Survey No. 134/3. Registered as Document No.3115 of 2010 on the file of the SRO, Singanailur.
- j) Sale deed bearing executed by S. Arputharaj and S. Gnanam in favour of Mrs. Subhashini herein in respect of the property situated in Uppilipalayam village, Coimbatore South Taluk, measuring an extent of 3,200 Sq.ft., comprised in Survey Nos. 134/1 to 4, 135/1 to 4, registered as Document No.8394 of 2011 on the file of the SRO, Singanailur.

Subhashini



WEB COPY

93

8

A copy of the Sale Deed dated 24.08.2007 and Sale Deed dated 24.08.2007 are herewith filed and the same may kindly be read as part herof.

8. I state that myself and my husband (Mr. A.Umapathy) had applied for mutation of revenue records in our names and the Application is pending till date. Since there was no response or action, I had sent a Letter dated 10.02.2021 to No.2 of you by registered post with acknowledgement due (RPAD), requesting No.2 of you to mutate the revenue records in our favour, based on the registered Sale Deed dated 26.08.2011 including issuance of Patta updating the Town Survey Land Register etc.
9. The above letter dated 10.02.2021 was sent by me as early as on 11.02.2021 and there has been no action taken by No.2 of you till date.
10. While things stood thus, through our counsel, myself and my husband (Mr. A.Umapathy), on 22.04.2021, sought details from the Public Information Officer of No.1 of you under the provisions of the Right to Information Act, 2005. I state that the Public Information Officer of No.1 of you had sent a Reply bearing Proceedings No. Na.Ka.No.4961/2021/R.HI dated 19.07.2021. A copy of the Application under Right to Information Act, 2005 dated 22.04.2021 and Reply of the Public Information Officer of No.1 of you dated

Subhashini



WEB COPY

5

94

19.07.2021) are herewith filed and the same may be kindly be read as part hereof.

11. I state that in the Reply dated 19.07.2021, in response to a specific piece of information sought, it has been stated that the survey for the purpose of Town Survey Land Register (TSLR) for Survey Nos.134/3, 134/4, 135/1, 135/2, 135/3 and 135/4 in Uppulapalayam Village, Coimbatore South, was done in the year 2006.
12. Thereafter, I was served with the notice bearing s.a.no. 11243/2021/w/1(R) dated 21.12.2021 by No.2 of you. In the Letter dated 21.12.2021, No.2 of you refer to some news circulated as if there is encroachment of an extent of 673 sq.mtr. This Letter dated 21.12.2021 has been addressed to Mr.Arputharaj (my vendor), myself and one Mr.S.P.Thyagarajan.
13. I state that No.2 of you had called upon me for an enquiry on 30.12.2021. In compliance with the above, myself and my husband (Mr. A.Udayasathy) had appeared on 30.12.2021 before No.2 of you and submitted that the Notice dated 21.12.2021 of No.2 of you is *ex facie* based on alleged news circulated, which is nothing but hearsay. Further, we also submitted that there is no reference to any news article or news published in any specific print or television media, there is also no reference to any documents/records of No.2

Subhashini



W.P. Nos.22762 and 22767 of 2024

WEB COPY

95

4

10

of you or any other authority, to show any alleged encroachment. No further action was taken based on the above Notice dated 21.12.2021 nor were we served with notice or intimation.

14. Thereafter, after a period of 2 years, on 03.05.2023, No.3 of you, through No. 2 of you had issued a Notice to me, bearing s.a.no. 11243/2021/e#1(4) calling upon us to attend an enquiry on 10.05.2023 regarding alleged encroachment of 673 Sq.mtr.

15. I state that I was shocked and surprised to receive the Notice dated 03.05.2023. In this Notice dated 03.05.2023, there is no reference to the earlier Notice of No.2 of you dated 21.12.2021. However, there is reference to some News Paper Article dated 12.12.2021.

16. I state that myself and my husband (Mr. A.Umapathy) had attended the enquiry on 10.05.2023 at 11AM, along with our advocate. We had filed Vakalatnamas, handwritten explanation and supporting documents before No.2 of you. I state that No.2 of you had received the documents from us and orally informed us that the documents filed by us would be considered. The hand written explanation was written by us during the enquiry and I did not have the opportunity to make a photocopy of the same.

17. I state that we had filed all the documents of title, namely the sale deeds of our predecessor in title. We had also filed copies of revenue records available with us. On 10.05.2023, in the evening, I received

Subhashini



WEB COPY

11

96

a call from the Office of No.3 of you stating that the documents submitted by us were misplaced in the records of No.2 of you.

18. On immediate knowledge of the above sequence of events, we had sent a Letter dated 10.05.2023 *sent by registered post with acknowledgment due on 11.05.2023*, clearly recording the fact that No. 3 of you had intimated to us about the alleged misplacing of documents. Our Letter dated 10.05.2023 was sent to No.3 of you and a copy was marked to No.2 of you.
19. I state that in the Letter dated 10.05.2023, we have requested No.3 of you to permit us to furnish another copy of the Vakalatnama, written submissions and supporting documents before No.2 of you. There has been no reply to our Letter dated 10.05.2023 *received by No.2 and 3 of you on 12.05.2023*, till date.
20. It is also pertinent to note that in the handwritten explanation filed by us before No.2 of you, we have clearly stated that there is no public land the subject properties and that there is no gifting of any land to the Corporation. I state that we have specifically stated that the subject property is our absolute property.
21. I state that we had followed up on the above Notice 03.05.2023 and our Letter dated 10.05.2023 in the office of No.2 of you and we were informed that No.2 of you would respond to our letter dated

Sudhashini



WEB COPY

97

12

10.05.2023. However, no such response has been sent by the 2nd Respondent.

22. However, to my shock and surprise, I have received a Notice signed on 24.06.2024, bearing s.s. no. 11243/2021/w1(c), signed by the No.1 of you wherein it is alleged that there is an encroachment and I have been directed to remove the alleged encroachment of an alleged public place.

23. The Show cause notice signed on 24.06.2024 has been issued without giving me an opportunity to be heard. I received the said Show cause Notice by a registered post.

24. The enquiry on 10.05.2023 was held in the office of No. 2 and No.3. None of my submissions made in the office of No.2 and No. 3 on 10.05.2023 were considered before issuing the Show cause notice signed on 24.06.2024.

25. Subsequent to the enquiry on 10.05.2023, I was shocked to receive an order dated 24.06.2024 (now Show Cause Notice). I state that I am the absolute owner of the property having acquired the property vide a registered instrument and the allegation of encroachment is fully baseless and strictly denied.

Sankashri



W.P. Nos.22762 and 22767 of 2024

WEB COPY

13

98

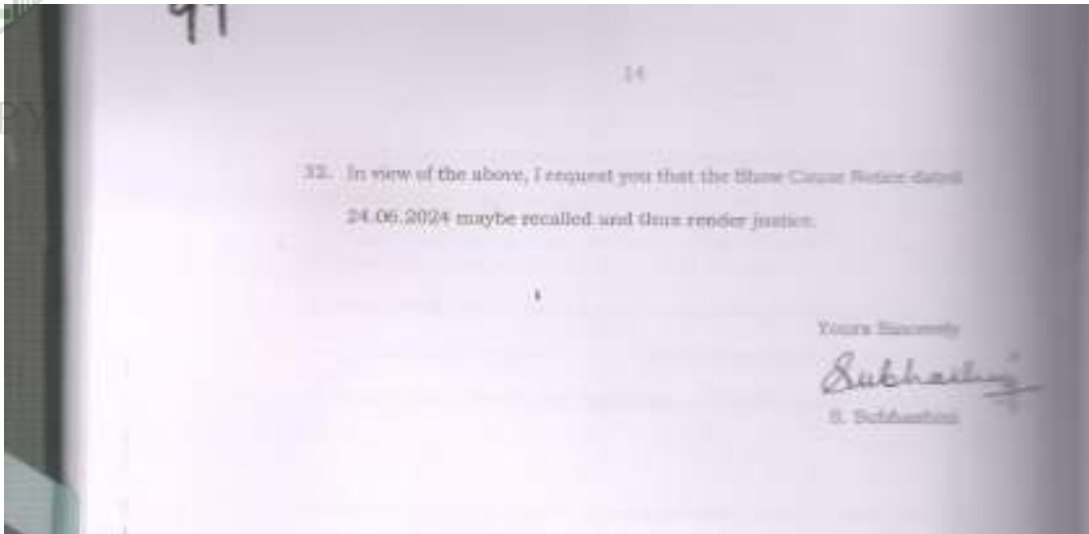
36. The allegation made in the Show Cause Notice and the earlier notices of vesting of public place in 1983, based on no Registered instrument is fully baseless and cannot confer any right on the corporation.
37. The initiation of the proceeding of *s.a.m.c.* 11243/2021/*sd*(4) by referring to a newspaper publication is wholly arbitrary and I am advised to state that it is settled law that newspaper are hearsay evidence.
38. In view of the above, I state that there is absolutely no encroachment or a public place and the allegations of so-called encroachment of 673 Square Meter in B.No. 143/3 are all incorrect contrary to the materials available to the record.
39. In compliance of the Hon'ble High Court, I am filing my response to the Show Cause Notice on 19.07.2024 (within the time period of 7 days) as fixed by the Hon'ble court as per para ii of the order 12.07.2024 and in consonance with the provisions of Section 128(1)(b) of TNULB Act. This reply and the enclosures filed may kindly be read as part hereof and suitable order may be passed.
30. I request an opportunity of personal hearing to explain the documents in the reply to the Show Cause Notice.
31. I am ready and willing to co-operate for any further hearings that is to be held in this regard.

Subhashini



W.P. Nos.22762 and 22767 of 2024

WEB COPY



5. Adverting to the aforementioned endorsement in the 19.07.2024 representation and the telephone number thereat, learned counsel for writ petitioner placed before us a print out of a screen shot from True Caller app and a scanned reproduction of the same is as follows:





W.P. Nos.22762 and 22767 of 2024

6. R1 has filed a counter affidavit and Mr.K.M.D.Muhilan, learned Standing counsel for R1 to R4 besides Mr.P.K.Harinath Babu, learned counsel for R5 are before us. R1 has filed a counter affidavit dated 25.09.2024 and the following points are noted:

i) Aforementioned paragraph 28 of the writ affidavit has not been met. There is no whisper in the counter affidavit of R1 to R4;

ii) Paragraph 12 of the counter affidavit reads as follows:

'12. I further submit that the petitioners did not submit any representation until 19.07.2024. Their representations were received on 22.07.2024. The petitioners neither provided new evidence nor made any new submissions in their letter. The Honourable Court's order did not require the issuance of a fresh show cause notice or personal hearing. Hence, in compliance with the said order, the Corporation officials carried out the eviction of the encroachment dismantled the temporary steel compound wall and shed, and erected a name board as per legal requirements. The officials acted in accordance with their responsibilities, as the Coimbatore City Municipal Corporation, as Custodian of public-purpose sites, is duty bound to remove encroachments from such sites.'

(iii) From the narrative thus far, it comes to light that passing final orders by R1 is not only pursuant to common order of this Court dated 12.07.2024 in W.P.No.19168 of 2024 and 19174 of 2024 but it is also a sanctus statutory duty under proviso to 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];

(iv) This Court notices that without meeting either Paragraph 28 of writ affidavit or 19.07.2024 representation with what according to writ petitioner is acknowledgment in first page, aforementioned paragraph 12 averments in the counter affidavit (on the teeth of paragraph 28 of writ affidavit and acknowledgment in 19.07.2024 representation) have been made.

7. Faced with the above situation, learned Standing Counsel for R1 to R4 sought time.



WEB COPY



W.P. Nos.22762 and 22767 of 2024

8. Let the matter stand over to 20.01.2025 but let R1 remain present in this Court. It is made clear that no further affidavits shall be received by the Registry without the leave of this Court.

List on 20.01.2025.

(M.SUNDAR J.) (K.RAJASEKAR J.)

09-01-2025

P.S. I: *Upload forthwith*

P.S.II : *All concerned including Registry of Madras High Court to act forthwith on the uploaded soft copy of this proceedings as uploaded in the official website of this Court. To be noted, the soft copies uploaded in the official website of this Court are water marked, besides being QR Coded.*

P.S.III: *Registry to communicate this order to The Commissioner Coimbatore Municipal Corporation (R1)'*

3. The aforementioned proceedings are tell-tale *qua* factual matrix as well as the trajectory the matter has taken before this Court. Today, Mr. B. Arvind Srevatsa, learned counsel on record for writ petitioners in both WPs, Mr.K.M.D.Muhilan, learned Standing Counsel for Coimbatore Municipal Corporation (RR 1 to 4 in both WPs) led by learned Additional Advocate General and Senior Advocate Mr.J.Ravindran and Mr. P.K. Harinath Babu, learned counsel for R5 (private respondent - S.P. Thiyagarajan) in both WPs are before us. This means that all the parties to both the captioned two main WPs and WMPs thereat are represented by their respective counsel.



W.P. Nos.22762 and 22767 of 2024

4. All the counsel submit in unison that facts have been correctly captured in aforementioned 09.01.2025 proceedings. Therefore, we reiterate that aforementioned 09.01.2025 proceedings shall also be read as integral part and parcel of this order. This further means that the short forms, abbreviations and short references used in earlier proceedings dated 09.01.2025 will continue to be used in the instant order also.

5. Pursuant to our aforereferred order, Mr.M.Sivaguru Prabhakaran, I.A.S., Commissioner, Coimbatore Municipal Corporation, Coimbatore (R1) is present in person in Court. Learned Additional Advocate General and Senior Advocate Mr. J. Ravindran very fairly submitted that final orders ought to have been made by R1 (Commissioner) *inter alia* owing to the statutory mandate *vide* proviso to Section 128(1)(b) of TNULB Act and sub-paragraph (iii) of paragraph 10 earlier judicial order of this Court dated 12.07.2024 in W.P.Nos.19168 of 2024 and 19174 of 2024.



W.P. Nos.22762 and 22767 of 2024

6. Learned Additional Advocate General and Senior Advocate went on to submit that R1 tenders apology and expresses regret for not having passed orders in the aforesaid manner. This submission is recorded.

7. Be that as it may, learned Additional Advocate General and Senior Advocate very fairly submitted that R1 will now pass orders taking into account representation dated 19.07.2024 made by writ petitioners (scanned and reproduced in our earlier proceedings).

8. Learned counsel for writ petitioners submits that the land which is the subject matter of instant writ petitions was originally a common well but we deem it appropriate to not to express any view or opinion on this submission or for that matter, on any point that has been raised in the 19.07.2024 representation and / or any other earlier representation.

9. As regards R5 (private respondent - S.P. Thiyagarajan), it was submitted by learned counsel for writ petitioners that R5 has an axe to grind but this was disputed by learned counsel for R5. We



deem it appropriate to not to delve further into this aspect of the matter as R5 is an informant and now, the matter is between the writ petitioners and the local body.

10. In the light of the narrative, discussion and dispositive reasoning thus far, the following order is made:

i. R1 (Commissioner, Coimbatore Municipal Corporation) shall now pass final orders in accordance with proviso to Section 128(1)(b) of TNULB Act within one week from today, *i.e.*, on or before 27.01.2025 by considering the aforementioned 19.07.2024 representation (scanned and reproduced in our earlier proceedings) as 'representation' within the meaning of proviso to Section 128(1)(b);

ii. The order passed in the aforementioned manner shall be duly served on both the writ petitioners under due acknowledgment within three working days from the date of the order;

iii. If the aforementioned order of R1 is in favour of the writ petitioners, that would be the curtains on the matter but if it is adverse to the writ petitioners, the order shall be kept in abeyance for 10 days from the date of



W.P. Nos.22762 and 22767 of 2024

service of the order on the writ petitioners. As there are two writ petitioners, 10 days will be computed from the latter date in respect of two writ petitioners if service is not made on them on the same day;

iv. The aforementioned window of 10 days is provided for the writ petitioners to assail the order (if adverse to the writ petitioners) if so advised and if so desired;

v. Though obvious, we make it clear that R1 shall pass final orders in accordance with proviso to Section 128(1)(b) of TNULB Act untrammelled by this order and this proceedings. In other words, R1 shall pass orders *vide* relevant provisions of TNULB Act on the merits of the representation of writ petitioners (representation dated 19.07.2024) and in accordance with law; and

vi. Learned Additional Advocate General and Senior Advocate very fairly submitted that status quo as of today will be maintained between today and lapsing of aforementioned 10 days window period (if R1 passes an adverse order). This submission is recorded. Likewise, the submission that the board now placed in the property in question will be removed forthwith, is recorded but with a rider that further action will depend on final orders to be made by R1.



W.P. Nos.22762 and 22767 of 2024

WEB COPY

11. Captioned two main WPs and captioned two WMPs thereat are disposed of in the aforesaid manner. There shall be no order as to costs.

(M.S., J.) (K.R.S., J.)

20.01.2025

cad
Index : Yes/No
Internet : Yes/No



W.P. Nos.22762 and 22767 of 2024

To:

WEB COPY

1. The Commissioner
Coimbatore Municipal Corporation
Coimbatore 641 001
2. The Assistant Commissioner - East Zone
Coimbatore Municipal Corporation
Coimbatore 641 001
3. The Assistant Executive Engineer (Planning) – East Zone
Coimbatore Municipal Corporation
Coimbatore 641 001
4. The Assistant Town Planning Officer – East Zone
Coimbatore Municipal Corporation
Coimbatore 641 001



WEB COPY



W.P. Nos.22762 and 22767 of 2024

M.SUNDAR, J.

and

K.RAJASEKAR, J.

cad

W.P.Nos.22762 and 22767 of 2024

20.01.2025

Page Nos.31/31