



W.P.No.24407 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2025

Coram

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MR.JUSTICE **K.RAJASEKAR**

W.P.No.24407 of 2024

&

W.M.P No.26686 of 2024 in W.P.No.24407 of 2024

1. P.Anand

Proprietor of Coffee Break

S/o.N.Panneer Selvam

B1-315, Manchester Grand Apartment

M.G.Road, Avarampalayam

Coimbatore – 641 006

2. Kavitha Seerappan

W/o.C.Palanichamy

3. A.K.Seerappan

S/o.Karuppanna Gounder

.. Petitioners

VS

1. The District Collector

Office of the District Collectorate

Coimbatore



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2. The Commissioner

Coimbatore Corporations
Coimbatore

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to the impugned order having reference Na.Ka.No.2024/H1 (N) dated 09.08.2024 passed by the 2nd respondent and quash the same and consequently direct the respondents not to interfere with the petitioners peaceful possession and enjoyment of the property under the name and style of “Coffee Break” situated in SF Nos.341 and 342, Sowripalayam Village, Ward No.28, North Zone, Coimbatore Corporation.

For Petitioner : Mr.R.Bharath Kumar

For Respondents : Mr.T.K.Saravanan
Government Advocate
for R1

Mr.J.Aravind
for Mr.D.R.Arunkumar
Standing Counsel for R2

ORDER

(Order of the Court was made by M.SUNDAR, J.)

When the captioned matter was taken up, Mr.R.Bharath Kumar, learned counsel for writ petitioners, Mr.T.K.Saravanan, learned Government Advocate



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for R1 and Mr.J.Aravind, learned counsel representing Mr.D.R.Arun Kumar,
Standing counsel for R2 are before this Court.

2. All the aforementioned learned counsel submit in unison in one voice that the captioned matter is directly and squarely covered by an order dated 26.11.2024 made in W.P.No.34695 of 2024 and WMP thereat and a scanned reproduction of which is as follows:

WEB COPY	W.P.No.34695 of 2024
IN THE HIGH COURT OF JUDICATURE AT MADRAS	
DATED : 26.11.2024	
CORAM	
<u>THE HONOURABLE MR.JUSTICE M.SUNDAR</u> and <u>THE HONOURABLE MR.JUSTICE K.RAJASEKAR</u>	
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 Nu.Ka.No.2024/H1(Va) dated 09.08.2024	
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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, Shanthi Nagar, Sowripalayam Village, Ward No.28, North Zone, Coimbatore 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

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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, Coimbatore, 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

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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;

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W.P.No.54895 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

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W.P.No.24695 of 2024

M.SUNDAR J.

and

K.RAJASEKAR J.

vs.

To

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

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26.11.2024

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3. In the light of the aforementioned narrative/undisputed position,
the following order is passed:

a) The writ petitioner shall send a representation/reply in response to the impugned notice within seven (7) days from today i.e., on or before 16.01.2025;

b) After receiving the representation from writ petitioner, the Commissioner shall pass orders on own merits and in accordance with law (this will be in tune with proviso to Section 128(1)(b) of TNULB Act);

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 in the response by way of representation. In other words, all questions are left open;

e) If the writ petitioner does not send a representation within seven (7) days from today, it will be open to the



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respondents to proceed further in accordance with law;

4. Captioned writ petition disposed of in the aforesaid manner.

Consequently, captioned Writ Miscellaneous Petition thereat is disposed of as closed. There shall no order as to costs.

[M.S., J] [K.R.S., J]
09.01.2025
(1/3)

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gpa

To

1. The District Collector
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Coimbatore

2. The Commissioner
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Coimbatore



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**M.SUNDAR,J.,
and
K.RAJASEKAR, J.,**

gpa

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