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W.P. No.77 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.01.2025

CORAM:

THE HON'BLE MR. JUSTICE M. SUNDAR
AND
THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. No.77 of 2025 & W.M.P. No.88 of 2025

Saadiq Basha

Petitioner

vs.

1. The Commissioner
Corporation of Coimbatore
Coimbatore 641 001
2. The Assistant Commissioner
South Zone
Corporation of Coimbatore
Palakkad Main Road
Kuniyamuthur Road
Coimbatore

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus, to call for the records relating to the impugned order passed by the first respondent in Na.Ka.No.2092/2023/H.1/the dated 10.10.2023 and to quash the same and consequently, direct the respondents to remove the fencing and signboard erected by the second respondent in the petitioner's property in Survey Nos.289/1, 299/1B and 741/1 situated at Kurichi Village, Coimbatore Taluk.

For petitioner Mr. C. Prabakaran

ORDER



(made by M. SUNDAR, J.)

Captioned main 'writ petition' ('WP' for the sake of brevity) has been filed with a certiorarified mandamus prayer assailing a order dated 10.10.2023 bearing reference Na.Ka.No.2092/2023/H.1/The (hereinafter 'impugned order' for the sake of convenience and clarity) made by R1 (Commissioner, Corporation of Coimbatore) and consequential mandamus to remove the fencing and signboard put up by R2.

2. Mr. C. Prabakaran, learned counsel on record for writ petitioner who is before us in the Admission Board, notwithstanding very many averments and grounds in the writ support affidavit, predicated his campaign against the impugned order on two points, viz., (a) writ petitioner's purchase of piece of land was prior to approval given by Town and Country Planning authority of Coimbatore and (b) Sections 38 and 37 of 'the Tamil Nadu Town and Country Planning Act' (Act 35 of 1972) (hereinafter 'TCP Act' for the sake of brevity) have not been adhered to.

3. Before we proceed further, we deem it appropriate to write that *vide* the impugned order, R1 has *inter alia* held that writ petitioner has encroached upon land admeasuring 1,526 sq. ft. or thereabouts by



putting up RCC superstructure and that the land that has been encroached upon has been set apart for public purpose *vide* a residential plots layout bearing reference no.LPDM/DDTP(CNRS) No.13/72.

4. We carefully considered the two point or in other words two-pronged challenge projected by learned counsel for writ petitioner *qua* impugned order.

5. As regards the first point, a careful perusal of paragraph 2 of the impugned order as well as paragraphs 4 and 7 of writ petitioner's writ support affidavit bring to light that the layout approval is of the year 1972. To be noted, these paragraphs read as follows:

Paragraph 2 of the impugned order:

தாங்கள் மாநகராட்சியால் அமைக்கப்பட்ட கம்பி வேலி மற்றும் மாநகராட்சியின் பெயர் பலகையை அகற்றித் தருமாறு கோரியுள்ள இடமானது அங்கீகரிக்கப்பட்ட மனைப்பிரிவு வரைபடம் எண்.LPDM/DDTP (CNRS) No.13/72-ன்படி பொது உபயோகம் என ஒதுக்கீடு செய்யப்பட்ட இடமாகும். இதில் தாங்கள் மாநகராட்சியின் பொது உபயோக இடத்தினை ஆக்கிரமிப்பு செய்து ஏற்கனவே 1526 சதுரடி பரப்பளவில் ஆர்க்சிசி குடியிருப்பு கட்டிடம் கட்டியுள்ளீர்கள்.



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Paragraphs 4 and 7 of writ support affidavit:

'4. I submit that in the said vacant land the respondent corporation had put up a fencing and erected sign board displaying that "Coimbatore Corporation Ward No.85" contending that it is a reserved site for public purpose belonging to the respondent as per the approved layout LPDM/DDTP (CN & R) No.13/72, which lies in SF No.298,299/1,741/1 of Kurichi Village of Coimbatore Municipal Corporation.

7. I submit that the subject matter of the property forms part of layout in Karnanithi Nagar and the layout was found as early as on 1972 in LPD No.13/72 by the proceedings of Deputy Director of Town and Country Planning, Coimbatore. But the subject matter of the land was settled in favour of my vendor and dealt with as the patta land all along. They have also made an application before the respondent corporation and obtained building planning permission to construct the building in the year 1983 and the then competent authority namely Executing Officer, Kurichi Town Panchayat, Pothanur, have granted permission to construct building to the then owner of the land. Accordingly, building was constructed and revenue records were also mutated in my favour. At this juncture, the erection of sign board and fencing put up by respondent Corporation after a period of 40 years stating that the subject matter of the land is reserved for public purpose is far fetched and clear non application of mind.'

6. It is writ petitioner's categorical averment that he purchased the aforementioned land which is subject matter of the impugned order in and by a sale deed dated 19.10.2012 registered as Document No.5430 of 2012 in the office of the Joint I Sub Registrar, Coimbatore. To be noted, a photocopy of the sale deed has also been annexed to the typed set of papers and it is from pages 39 to 55. Therefore, it is clear that it is writ petitioner's case that he purchased the land in question on 19.10.2012 and it is also writ petitioner's averment that the approval was of the year 1972. Therefore, the first



point is clearly a damp squib. To put it differently, it is a non starter.

7. This takes this Court to the second point which turns on Sections 38 and 37 of TCP Act. Section 38 governs release of land and Section 37 is captioned 'Power to purchase or acquire lands specified in development plan'. A careful perusal of these two provisions brings to light that they provide for acquisition of land and that too, in accordance with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) and that obviously, they are provisions pertaining to compulsory acquisition of land when needed for a development plan. This is abundantly clear from a careful reading of Section 36 of TCP Act. In the case on hand, we are concerned with a layout approval, *i.e.*, approval of layout in a private land comprised in S.Nos.298,299/1 and 741/1 in Kurichi Village situate within South Zone of Coimbatore Corporation. Therefore, this Court has no hesitation in holding that Sections 38 and 37 of TCP Act do not apply to the case on hand and hence, obviously, do not come to the aid of the writ petitioner in his campaign against the impugned order.

8. In the light of the narrative, discussion and dispositive



reasoning set out *supra*, it follows as a naturally corollary that the certiorari limb of the prayer cannot be acceded to. The mandamus limb is clearly a consequential prayer as already alluded to *supra*.

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9. *Ergo*, the sum sequitur is, the certiorarified mandamus prayer cannot be acceded to. The main writ petition fails and the same is dismissed. Consequently, captioned WMP thereat also perishes with the main WP and therefore, captioned WMP is also dismissed. There shall be no order as to costs.

(M.S., J.) (K.R.S., J.)
06.01.2025

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