



ABSTRACT

Coimbatore City Municipal Corporation - Private Pathway in S.No.936, TP Scheme No.8, Race Course Road, Coimbatore Resolution passed by Coimbatore City Municipal Corporation Council Resolution No.580 dated 12.8.1986 wrongly declaring it as Common Pathway without following procedure - Order of the High Court of Madras dated 1.2.2008 in W.A.No.2042 of 2005 – Cancellation of Resolution No.580 dated 12.8.1986 – Ordered.

MUNICIPAL ADMINISTRATION & WATER SUPPLY (MA 1) DEPARTMENT

G.O(D)No.285

Date:07.06.2010

Read:

1. Judgement of the High Court of Madras dated 1.2.2008 in W.A.No.2042/2005.
2. From Thiru N.K.Velu & 10 others Coimbatore representation dated 1.4.2008.
3. From the Commissioner, Coimbatore City Municipal Corporation Letter No.10307/08/Hi(S) dated 7.9.2009.
4. Government D.O.letter No.13619/MAI/2008-7dated 3.11.2009.
5. From the Commissioner Coimbatore Municipal Corporation Letter Roc.No.10307/08 HI(S) dated 11.12.2009.
6. From the DMA letter Roc.No.54204/2009/MCA 3 dated 25.1.2010
7. Government show cause letter No.13619/MAI/2008-8 dated 26.4.2009.
8. From the Commissioner, Coimbatore City Municipal Corporation letter Roc.No.10307 2008/Hi/ South dated 17.5.2010.

ORDER:

In the representation second read above, Thiru. N.K.Velu & 10 others have represented against the resolution No.580 dated 12.8.1986 of the Coimbatore Municipal corporation Council, citing the Judgment dated 1.2.2008 of the High Court of Madras in WA.No.2042 of 2005 first read above.

2. In his remarks thereon in the letter third cited the petitioners have stated that during the enquiry conducted on 18.3.2009 and with reference to the

Corporation records, that there are no records, to show that any requisition from the majority of the owners of the above said "Justice Sathyadev Enclave" has been obtained as required under sub section (1) of section 255 of Coimbatore City Municipal Corporation Act, 1981 before passing the council's resolution, declaring the pathway under reference as a public pathway. Furthermore, no notification in this regard has been got published in the gazette as required under section 255 (i) of the Coimbatore City Municipal Corporation Act 1981.

3. In the proposals sent in the letter fifth read above, the Commissioner, Coimbatore City Municipal Corporation has stated that the High Court in the order first cited has directed the petitioners to approach the Government for remedy under Section 49 of Coimbatore City Municipal Corporation Act within 8 weeks and on such filing of the representation, the Government shall dispose of the same in accordance with law within 12 weeks thereafter, till then statue quo should be maintained.

4. The main issue related to the maintenance of a pathway located in TS No.936, 937/1A1B, 2 in Racecourse with a dimension of 20' x 499'. The petitioners of the Writ Appeal were claiming it as their own private pathway by producing the ownership evidences. As per the Town Survey Land Register these lands belong to private people.

5. The Council of Coimbatore Corporation has passed a resolution in MCR.No.580 dated 12.8.1986 to declare the street as Public street and collected Rs.31813/- as basic amenities charges from on Thiru.Jeyaraj. The High Court has observed that Coimbatore Corporation has not followed the provisions contained in Sec.255 of Coimbatore City Municipal Corporation Act, 1981 and it has pointed out that therefore it is clear that the action of the Corporation is not in compliance with the provisions of law contemplated under section 255 of the Act. The High Court has pointed out that under such circumstances, the grievance of the petitioners can be solved by the Government by Suspending /Canceling the resolution under section 49 of the above said Act after giving an opportunity to the persons concerned.

6. Thus the court has directed the petitioners to approach the Government under section 49 of Coimbatore City Municipal Corporation Act within a period of 8 weeks from the date of receipt of a copy of the order and on such filing of the representation; the Government shall dispose of the same in accordance with law, within 12 weeks thereafter.

7. The disputed pathway is still being used by the petitioners as their own private pathway. The land ownership is also in the name of private people. Hence the resolution passed by the Council in MCR.No.580, dated 12.8.1986 was proposed to be cancelled as directed by the High Court in the facts and circumstances of the case.

8. In view of the fact that the Resolution No.580 dated 12.8.1986 has been passed without following the provision under section 255 of Coimbatore City Municipal Corporation Act, 1981, it was proposed to cancel the said Resolution No.580 dated 12.8.1986 in exercise of the powers conferred to Government under section 49 of the said Act and show cause notice seventh read above was issued to the Commissioner, Coimbatore City Municipal Corporation accordingly.

9. In his letter 8th read above, the Commissioner, Coimbatore Municipal Corporation has now stated that based on the material facts available on record of the Coimbatore Corporation and after considering the actual circumstances of the case as mentioned below, there is no objection to the proposed cancellation of the Coimbatore Corporation Councils resolution No.580 dated 12.8.1986; there are no records available in the Corporation to show that any requisitions from the majority of the owners of the above said "Justice Sathyadev Enclave" have been obtained as required under subsection (1) of section 255 of Coimbatore City Municipal Corporation Act, 1981 before passing the council's resolution, declaring the pathway under reference as a public pathway. Furthermore, no notification in this regard has been got published in the gazette as required under section 255 (2) of the Coimbatore City Municipal Corporation Act 1981. The disputed pathway is still being used by the petitioners as their own private pathway. Further, the land ownership is also in the name of private people as evidenced from the records produced by the petitioners. According to the Town Survey Land Register of the Corporation, the land under reference belongs to the private people. In the light of the above facts and circumstances, he has submitted that there is no objection to the proposed cancellation of the above said council's resolution No.580 dated 12.8.1986.

10. The Government after careful consideration of the show cause notice 7th read above and the reply from the Commissioner, Coimbatore Municipal Corporation 8th read above and the orders of the High Court of Madras, first read above direct under section 49 of the Coimbatore City, Municipal Corporation Act, 1981 that the resolution No.580 dated 12.8.1986, be cancelled with immediate effect.

11. The Commissioner, Coimbatore City Municipal Corporation is requested to take necessary follow up action pursuant to the orders at para 10 above.

(BY ORDER OF THE GOVERNOR)

NIRANJAN MARDI
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Director of Municipal Administration,
Chennai-5.

The Commissioner,
Coimbatore City.
Municipal Corporation, Coimbatore,

Copy to:
Thiru N.K.Velu & others,
Justice Sathiyadev Enclave,
No.8, Race Course Road, Coimbatore – 641 018.
Municipal Administration and
Water Supply (OP-II) Department,
Chennai-9.

/ Forwarded by Order/

Section Officer