

Cont.P.(MD)No.2914 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.03.2024

PRONOUNCED ON:20.06.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Cont.P.(MD)No.2914 of 2024

in

W.P.(MD)No.28841 of 2022

Henri Tiphagne

: Petitioner / Petitioner

Vs.

M.S.Sangeetha, I.A.S.,
The District Magistrate cum
District Collector,
Office of the District Collectorate,
Madurai,
Madurai District – 625 020.

: Contemnor/Respondent No.1

PRAYER:-Petition is filed under Section 11 of the Contempt of Courts Act, 1971, to initiate contempt proceedings under Section 11 of the Contempt of Courts Act, 1971, against the Contemnor / Respondent herein for her wilful disobedience to implement the order passed by this Court in W.P.(MD)No.28841 of 2022, order dated 12.06.2023.



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Cont.P.(MD)No.2914 of 2024

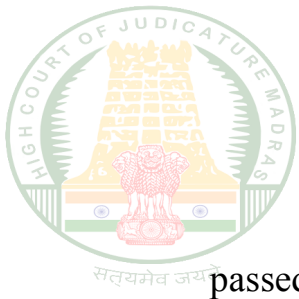
For Petitioner : Mr.R.Karunanidhi

For Respondent : Mr.R.Baskaran
Additional Advocate General
assisted by
Mr.M.Senthil Ayyanar
Government Advocate (Civil Side)

ORDER

The petitioner invoking Section 11 of the Contempt of Courts Act, 1971, has filed the above petition to punish the respondent/contemnor for her wilful disobedience to implement the order passed by this Court in W.P.(MD)No.28841 of 2022, dated 12.06.2023.

2. The petitioner has filed a Writ Petition invoking Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents 1 to 8 therein to ensure the immediate removal of the public nuisance complained off in the complaint and until the same is complied, the business enterprise is to be temporarily shut down or a few floors of the said building is to be closed on considering the representations dated 12.12.2022 and 17.12.2022 within a stipulated time fixed by this Court. This Court, after hearing the petitioner's side and all the respondents has



Cont.P.(MD)No.2914 of 2024

WEB COPY

passed an order dated 12.06.2023 and the concluding portion is extracted hereunder:

“35. Considering the above, this Court is of the clear view that necessary directions are to be issued to the first respondent to find out as to whether the public nuisances complained of are still existing and in case, the public nuisances are still existing, to take necessary action for the removal of the same. Accordingly the first respondent / District Magistrate is directed to constitute a Committee consisting of the officials from all the Government departments connected with the issues involved in the above case, for inspection of the ninth respondent buildings and the surrounding area and to see as to whether the public nuisances complained of are still existing and in case of a report that the public nuisances are still existing, the first respondent shall direct the ninth respondent to remove the nuisances or rectify the defects pointed out within a time frame to be fixed and in the case of failure to comply with the directions, the first respondent is directed to take appropriate action, in accordance with law.

36. With the above directions, the Writ Petition stands disposed of. Consequently, the connected Miscellaneous Petition is closed. No costs”



Cont.P.(MD)No.2914 of 2024

WEB COPY

3. The ninth respondent in the writ petition has preferred an appeal in W.A.(MD)No.1330 of 2023 under Clause 15 of Letters Patent and the Hon'ble Division Bench of this Court, considering the preliminary objection with regard to the maintainability of the Writ Appeal, dismissed the Writ Appeal as not maintainable on 14.08.2023. Challenging the orders passed in W.P.(MD)No.28841 of 2022, dated 12.06.2023 and the order passed in W.A.(MD)No.1330 of 2023, dated 14.08.2023, the ninth respondent has filed a Special Leave Petition before the Hon'ble Supreme Court in S.L.P.(Civil) Diary No.45415 of 2023 and the Hon'ble Supreme Court dismissed the Special Leave Petitions and it is very much necessary to extract the order:

“Delay condoned.

Though we are not inclined to interfere with the impugned order(s), on a perusal, we find that the High Court has not given any specific finding on facts.

In such view of the matter, the direction of the High Court will have to be understood to mean that the authority concerned shall consider it on its own merits in accordance with law.



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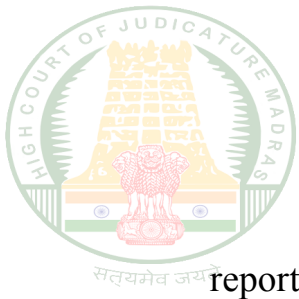
Cont.P.(MD)No.2914 of 2024

The Special Leave Petitions are dismissed.

Pending application, if any, shall stand disposed of.”

4. The main contention of the petitioner is that the respondent has wilfully disobeyed the High Court's order, despite being a public servant expected to implement court orders diligently. The petitioner claims to have visited the respondent multiple times, only to receive evasive responses. This lack of compliance is alleged to amount to wilful disobedience, warranting initiation of contempt proceedings under Section 11 of the Contempt of Courts Act, 1971, for disobeying the order dated 12.06.2023, in W.P.(MD) No. 28841 of 2022.

5. It is the specific contention of the respondent that in pursuance of the directions of this Court, she constituted a committee consisting of (1) Revenue Divisonal Officer, Melur; (2) Assistant Commissioner (Traffic Police) Madurai City; (3) Assistant Commissioner, Zone 1, Madurai City Corporation, Madurai; (4) District Fire Officer; (5) Assistant Executive Engineer, Public Works Department, Melur; (6) Member Secretary, Local Planning Authority, Madurai and the said committee conducted joint inspection on 11.07.2023 and submitted a



Cont.P.(MD)No.2914 of 2024

WEB COPY

report to the respondent, that subsequently, the respondent has directed the committee to re-inspect the building with regard to the rectification of defects and in pursuance of the same, the committee reinspected the building on 01.04.2024 and submitted a report to the respondent on 10.09.2024 and that in the said report, the committee has stated that all the rectifications pointed out came to be rectified and that there is no public nuisance made out as alleged by the petitioner. The respondent has produced the copies of her proceedings dated 22.06.2023 constituting the committee and the report dated 03.08.2023 submitted by the committee, the proceedings of the respondent dated 21.02.2024 directing the committee to reinspect the building and the report dated 10.09.2024 submitted by the committee.

6. It is evident from the above proceedings and reports, the committee has earlier pointed out the following defects required to be rectified and the same are extracted hereunder:

“1. 8th and 9th floor of the building should not be used for shop, storage and food court. It should be used only for office purpose as per PPNOC and compliance certificate of Fire and



Cont.P.(MD)No.2914 of 2024

WEB COPY

Rescue Services Department. Buildings about 30 meter in height not to be permitted for mercantile purpose as per the guidelines given in the National Building Code of India, 2016.

2 There is no minimum ventilation from 7th to 9th floor shop portion of the building. Minimum ventilation should be provided all floors of the building as per the guidelines given in National Building Code of India, 2016.

3. Hose reel assembly, wet riser system, automatic sprinkler system, automatic detection system and manual call points provided in the 8th and 9th Floors were damaged at the time of fire incident. It should be repaired and maintained in good working condition.

4. Refuge area should be provided at the full fledged manner as per the guidelines given in the National Building Code of India, 2016.

5. The goods are being stocked in the vehicular ramp of this building and it should be cleared.

6. Additional one wet riser should be provided in each floor area of MLCPs.

7 Sprinkler system should be extended to escalator area (all side of the cutout opening as per NBC part IV 2016, 3,4,5,2).

8. "Exit" signage's should be provided in all floors with the alternative source of power supply.

9. The existing staircase should be made with pressurization as per NBC-2016, and



Cont.P.(MD)No.2914 of 2024

WEB COPY

10 Automatic smoke ventilation system should be provided at all floors of MLCPs.”

7. It is evident from records that the respondent sent a communication to the ninth respondent directing them to rectify the defects pointed out by the committee and the ninth respondent has also submitted letters intimating about the rectification of defects. In the second report submitted by the committee, they have stated that all the defects noted earlier have been rectified. According to the committee, they have recommended to construct a new bridge in the channel by the Saravana Stores, for which permission was also accorded by the Public Works Department, but the ninth respondent management has not commenced the said work. But as rightly contended by the learned Additional Advocate General, the construction of a new bridge is nothing to do with the present contempt proceedings, as there was no direction from this Court directly or indirectly.

8. In the second report, it has been stated that the external staircases are provided on the external wall/facade with necessary equipments. The learned Counsel for the petitioner would submit that the



Cont.P.(MD)No.2914 of 2024

WEB COPY

Revenue Divisional Officer has given false particulars before this Court, as there are no external staircases available in the ninth respondent building. When this was pointed out, the Revenue Divisional Officer who submitted the committee's report to the respondent entered into appearance and submitted that it was mentioned by mistake. Moreover, the learned Counsel for the petitioner would submit that even as per the report of the Fire and Safety department, the external stairs is a mandatory requirement for such a high rise buildings and despite giving direction for erecting such external staircases, the ninth respondent has not complied with the direction and that the committee has already furnished false averments as if the external staircases were provided.

9. In view of the above, this Court directed the respondent to file an affidavit in this regard and in pursuance of the same, the respondent filed an affidavit sworn on 17.03.2025 wherein she has stated that the Revenue Divisional Officer appeared before this Court and replied that by mistake such an entry has been made in the report and apologized for the same, that actually there is no such visible external staircases and that as per the National Building Code 2016, since there exist 5 staircases

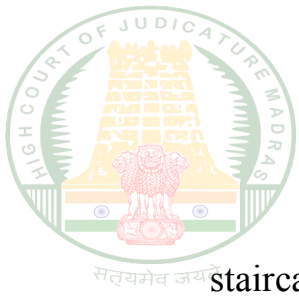


Cont.P.(MD)No.2914 of 2024

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with pressurization, there is no need or necessity to provide a open staircase on the outer wall of the building.

10. The respondent in the affidavit has further stated that NBC 2016 provides for Fire and Life Safety under Part 4 and as per Rule 4.4.2.4.3 of the NBC 2016 which deals with staircases and in Rules 4.4.2.4.3.1 (General), it is stated that the staircases may be internal or external, wherein Rule 4.4.2.4.3.2 deals with internal staircases and Rule 4.4.2.4.3.3 deals with curved staircases and Rule 4.4.2.4.3.4 deals with external staircases. After the completion of the building, the District Town Planning office issued a certificate for completion of the construction dated 17.11.2022 and in the said permission granted by the Local Planning Authority and in the planning permission, no external staircase has been provided and the Tamil Nadu Combined Development and Building Rules 2019 and the Nation Building Code, 2016 does not provide for any compulsory or mandatory external staircase to be provided. As rightly contended by the learned Additional Advocate General, Rule 4.4.2.4.3.1 of the National Building Code 2016 contemplates that the staircases may be internal staircases or external



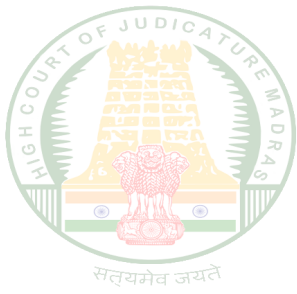
Cont.P.(MD)No.2914 of 2024

WEB COPY

staircases. The learned Counsel for the petitioner has not shown that the external staircases is mandatory for such a building.

11. The learned Counsel for the petitioner would submit that the ninth respondent without obtaining any licence under the Madurai City Municipal Corporation Act or under the Madras City Police Act (The Madras City Police (Extension to the City of Madurai and to the City of Coimbatore both Act 1987) has been running a food court and that the committee has not raised any objection with regard to the same. But the learned Additional Advocate General would submit that the Food and Safety wing of the Government of Tamil Nadu has granted necessary licence under the FSSAI Act to run food establishment in the ninth respondent building and has produced the copy of the same.

12. No doubt, the learned Counsel for the petitioner has attempted to show some other defects alleging violations of National Building Code 2016 and Madras City Municipal Corporation Act. In the contempt proceedings, this Court is not expected to see as to whether there are any violations to the Acts referred by the petitioner. At the outset, it is pertinent to note that this Court has not given any positive directions to



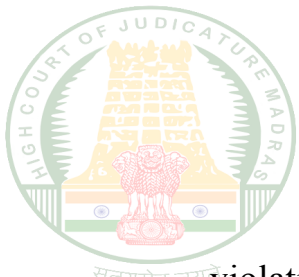
Cont.P.(MD)No.2914 of 2024

WEB COPY

the respondent, but only directed the respondent to constitute a committee and to see as to whether public nuisances complained of are all still existing and in case of report that the public nuisance are still existing, the ninth respondent was to be directed to remove the nuisances and rectify the defects pointed out within a time frame to be fixed and in case of failure to comply with the directions, the respondent was directed to take appropriate action in accordance with law.

13. The Hon'ble Apex Court has clarified that the High Court's direction requires the authority to consider the matter on its own merits in accordance with law, without any specific finding on the facts. Given the absence of a positive direction to the respondent, compliance is not warranted. Moreover, even if the respondent failed to take necessary action, it does not necessarily imply willful disobedience of this Court's directions.

14. The Hon'ble Supreme Court in *C.Elumalai and others Vs. A.G.L.and another* in *Cont.P.(MD)No.118 of 2017* has held that in order to invoke contempt jurisdiction, there must be wilful and deliberate

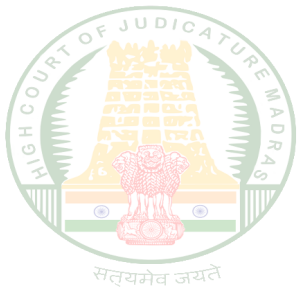


Cont.P.(MD)No.2914 of 2024

violations of the Court's order and the relevant passages are extracted
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*“8. In **Ashok Paper Kamgar Union v. Dharam Godha and Ors. (2003) 11 SCC 1**, this Court had an occasion to consider the concept of 'wilful disobedience' of an order of the Court. It was stated that 'wilful' means an act or omission which is done voluntarily and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. According to the Court, it signifies the act done with evil intent or with a bad motive for the purpose. It was observed that the act or omission has to be judged having regard to the facts and circumstances of each case.*

*9. In **Kapildeo Prasad Sah and Ors. v. State of Bihar and Ors. [1999 (7) SCC 569]** it was held that for holding a person to have committed contempt, it must be shown that there was wilful disobedience of the judgment or order of the Court. But it was indicated that even negligence and carelessness may amount to contempt. It was further observed that issuance of notice for contempt of Court and power to punish are having far reaching consequences, and as such, they should be resorted to only when a clear case of wilful disobedience of the court's order is made out. A*



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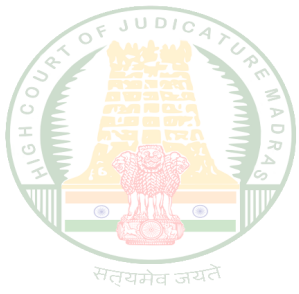


Cont.P.(MD)No.2914 of 2024

petitioner who complains breach of Court's order must allege deliberate or contumacious disobedience of the Court's order and if such allegation is proved, contempt can be said to have been made out, not otherwise. The Court noted that power to punish for contempt is intended to maintain effective legal system. It is exercised to prevent perversion of the course of justice.

15. In ***Chaturanga Kantharaj and another Vs. P.Ravikumar and others*** reported in **2024 Live Law SC 971**, the Hon'ble Apex Court has held that the contempt power can be invoked only if it is established that there was wilful disobedience and the relevant passage is extracted hereunder:

“In order to punish a contemnor, it has to be established that disobedience of the order is 'wilful'. It means knowingly-intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It would exclude casual, accidental, bonafide or unintentional acts or genuine inability and would also not include involuntary or negligent actions. The deliberate conduct of a person means that he knows what he is doing and intends to do the same- If two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable.”



Cont.P.(MD)No.2914 of 2024

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16. In the present case, the respondent has complied with the court's directions by constituting a committee and obtaining reports. Even if implied directions were issued, there is no clear disobedience. Moreover, there is no evidence to suggest deliberate or intentional disobedience by the respondent. Therefore, this Court finds no basis for initiating contempt proceedings, and the petition is liable to be dismissed.

17. In the result, the Contempt Petition is dismissed.

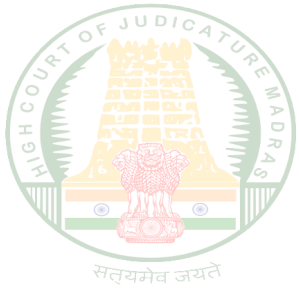
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NCC : Yes : No
Index : Yes : No
Internet : Yes : No

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To

M.S.Sangeetha, I.A.S.,
The District Magistrate cum
District Collector,
Office of the District Collectorate,
Madurai,
Madurai District – 625 020.



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Cont.P.(MD)No.2914 of 2024

K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

Cont.P.(MD)No.2914 of 2024

20.06.2025