

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.08.2015

Coram :

The Hon'ble Mr.Justice N.KIRUBAKARAN

W.P.Nos.18399 and 25945 of 2015
and M.P.No.1 of 2015

B.Mangilal ...Petitioner in W.P.No.18399/2015 &
2nd Respondent in W.P.No.25945/2015

vs

1. Chief Executive Officer,
St. Thomas Mount cum Pallavaram
Office of Cantonment Board,
St. Thomas Mount,
Chennai - 16. ... 1st Respondent in both WPs

2.N.Janakiraman alias Mohan Sai ... 2nd Respondent in WP.No.18399/2015
& Petitioner in W.P.No.25945/2015

Prayer in W.P.No.18399/2015 :- Writ Petition filed under Article 226 of the Constitution of India for issue of writ of certiorarified mandamus calling for the records of the 1st respondent in No.STM/Works/1/0781/dated 17.6.2015 and quash the same as illegal, non est in law and consequently forbear the first respondent from interfering petitioner's peaceful possession and enjoyment of the Shop bearing No.3/104, Butt Road, St.Thomas Mount, Chennai - 16.

Prayer in W.P.No.25945/2015 :- Writ Petition filed under Article 226 of the Constitution of India for issue of writ of declaration declaring that the proceedings in ref.STM/Works/1/0781 dated 17.06.2015 issued by the 1st respondent herein, is a valid exercise of power under the Cantonment Act, 2006 regardless of the outcome of RCOP No.189 of 1997 in respect of the premises situate at No.104, Butt Road (Bazaar Road) St. Thomas Mount, Chennai - 600 016.

For Petitioner : Mr.B.Vijay
in WP No.18399/2015
For petitioner
in WP.No.25945/2015 : Mr.R.Prabhakaran

For Respondents : Mr.C.Mohan for
M/s.King & Patridge
for R1 in both the Wps.

O R D E R

In W.P.No.18399 of 2015, the petitioner is a tenant occupying a portion of the property at No.104, Butt Road, St.Thomas Mount, Chennai - 600 016 which is coming under the first respondent cantonment jurisdiction. He has challenged the order of eviction issued by the first respondent alleging that the building which is occupied by the petitioner is in dilapidated condition and therefore it requires demolition.

2. The case of the petitioner is that he is a tenant in respect of Shop bearing No.3/104, Butt Road, St. Thomas Mount, Chennai - 600 016 and he has been running mobile accessories business. The petitioner became tenant under the second respondent on a monthly rent and there is a proceeding pending between the petitioner and the second respondent/landlord in RCOP No.41 of 1997 subsequently renumbered as RCOP No.189 of 1997 filed by the second respondent, pending on the file of District Munsif Court, Alandur seeking eviction on the ground of wilful default, acts of waste, demolition and reconstruction.

3. When the rent control proceedings are pending before the appropriate forum, the second respondent clandestinely instigated the first respondent to issue a demolition notice and the demolition notice has been issued without notice to the petitioner and therefore the said impugned order is being challenged.

4. The learned counsel for the petitioner would contend that suppressing the pendency of the eviction proceedings between the petitioner and the second respondent, the second respondent enforced for issuance of impugned proceedings. Moreover, the second respondent already filed W.P.No.20755 of 2014 seeking a direction to the first respondent to take necessary steps under Section 320 of the Cantonment Act 2006 to remove or demolish the building at No.104, Butt Road, St.Thomas Mount, Chennai as the building threatens the safety and security of the occupants and the neighbours. The said writ petition was disposed of on 05.03.2015 quashing the order passed by the first respondent on 11.12.2013 against the second respondent/landlord and giving liberty to the first respondent Cantonment Board to take necessary action after giving notice to the tenant namely the petitioner herein.

5. According to the learned counsel for the petitioner, even though the petitioner has been made as a second respondent in the above said writ petition, no notice was issued to him and therefore against the said order, he has already filed W.A.No.1227 of 2015 and the same is likely to come up before the Division Bench of this Court and therefore he seeks to wait for disposal of the writ appeal. Moreover, when the petitioner has been impleaded as second respondent in the above said writ petition, he ought to have been

given notice and without giving notice, the order is said to be improper and therefore it is liable to be set aside. He would further submit that the impugned order should be treated as show cause notice and the petitioner should be given an opportunity to put forth his case. Hence, he seeks for setting aside the impugned order.

6. On the other hand, the learned counsel appearing for the first respondent would submit that the building is in a very dilapidated condition and it requires to be demolished and therefore the first respondent rightly initiated proceedings by issuing demolition notice to the second respondent and the same was set aside at the instance of the second respondent herein by filing Writ Petition No.20755 of 2014 on 05.03.2015 giving liberty to the first respondent to take action against the petitioner and therefore the order cannot be set aside.

7. The learned counsel for the second respondent / landlord would submit that the building is in very dilapidated condition and therefore it would cause danger and threat to the safety and security to the persons who are in possession including the petitioner and other neighbours and therefore he seeks a direction to the first respondent to demolish the building.

8. Heard the parties and perused the records.

9. There is no dispute with regard to the ownership of the land and the building by the second respondent. However, it is coming under the control of the first respondent Cantonment Board jurisdiction. It is also an admitted fact that the petitioner is a tenant and the second respondent is a landlord. Admittedly, there is a dispute between the petitioner and the second respondent regarding eviction of the petitioner on the ground of demolition and reconstruction, acts of waste and wilful default. Dehors that, now the first respondent issued a notice to the petitioner under Section 297 of the Cantonment Act 2006 stating that the building condition is in ruinous state, dilapidated condition and unfit for human habitation. When the Board which has got jurisdiction over the property has come to the conclusion that the building is in ruinous state and requires immediate demolition as it threatens the safety and security of not only the petitioner but also those who are living in and around the property and as an appropriate authority the first respondent has to safeguard the interest of all the public in that area and therefore in exercise of statutory power and based on the personal satisfaction namely by visiting the property and taking note of the photographs, the impugned order has been passed.

10. The photographs of the building has been produced before this court. A perusal of the photographs would undoubtedly prove that the building is in ruinous state and requires to be demolished. Moreover, the building occupied by the petitioner is an independent building and only a portion of the building is standing,

that too in ruinous state. If the petitioner is allowed to occupy the building, it will definitely cause threat to the petitioner as well as to the other neighbours, especially when he is doing business. When the first respondent is satisfied and this court is also satisfied with the status of the building by perusal of the records, especially photographs produced by the authorities, this court comes to the conclusion that the building requires to be demolished immediately.

11. Though the learned counsel appearing for the petitioner would submit that he was not given notice in the earlier W.P.No.20755 of 2014 and he was not even made as a party, a perusal of the said order would reveal that no right of the petitioner is infringed by passing of the said order. Paragraph 4 of the said order is usefully extracted as follows -

4. In the light of the above, impugned order cannot be enforced as against the petitioner and accordingly the same is quashed. However, this order will not prevent the first respondent from proceeding against the second respondent in the manner known to law.

12. This Court, vide order dated 05.03.2015, only directed the first respondent to proceed against the petitioner. Even if the order of this court dated 05.03.2015 is ignored, the first respondent has got every right under the Cantonment Act to proceed. It is not as if that the order passed by this court does not in anyway affect the rights of the petitioner. Only right to proceed has been given to the first respondent.

13. Even though the learned counsel for the petitioner would state that his rights are safeguarded under Tamilnadu Buildings Lease & Rent Control Act, as per the provisions of the Cantonment Act, the first respondent has initiated proceedings against the petitioner. The Cantonment Act is a recent Act and is a Special Act and it is comprehensive in nature. Section 297 of the Cantonment Act reads as follows -

297. Power to require buildings, wells, etc., to be rendered safe.

297. Power to require buildings, wells, etc., to be rendered safe. - Where in a cantonment any building, or wall, or anything affixed thereto, or any well, tank, reservoir, pool, depression, or excavation, or any bank or tree, is in the opinion of the Chief Executive Officer, in a ruinous state or, for want of sufficient repairs, protection or enclosure, a nuisance or dangerous to persons

passing by or dwelling or working in the neighbourhood, the Chief Executive Officer, by notice in writing may, require the owner, or part-owner or person claiming to be the owner or part-owner thereof, or, failing any of them, the occupier, thereof, to remove the same or may require him to repair, or to protect or to enclose, the same in such manner as he thinks necessary; and, if the danger is, in the opinion of the Chief Executive Officer, imminent, he shall forthwith take such steps as he thinks necessary to avert the same.

14. A reading of the said section would make it clear that the Cantonment Board has got every power and jurisdiction to direct the owner or occupier of the building to vacate and take steps, including demolition. As stated above, the first respondent is already convinced with the status of the building and the materials produced would also make this court to convene with the ruinous state of the building. Therefore, this court cannot take a different view as taken by the first respondent which is taken considering the position of the building.

15. Man's life is very precious. When the authorities, in exercising powers under the Special Act, after considering the materials comes to the conclusion that the building is in ruinous state and this court is also convinced with the reasoning given by the first respondent, this court is left with no other option to sustain the impugned order. Therefore, while sustaining the impugned order, this court grants two months time from today, to the petitioner to vacate the premises, provided the petitioner files an undertaking affidavit on or before 31.08.2015, failing which the first respondent is at liberty to take action to remove the petitioner immediately.

16. It is made clear that the property is covered by Cantonment Board and the first respondent has got every jurisdiction to oversee the properties and therefore if the second respondent gets the possession of the property, the second respondent is expected to act strictly as per the provisions of the Cantonment Board.

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17. With the above directions, W.P.No.18399 of 2015 is disposed of. In view of the reasoning given above, the writ petition filed by the petitioner/landord in W.P.No.25945 of 2015 is also disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

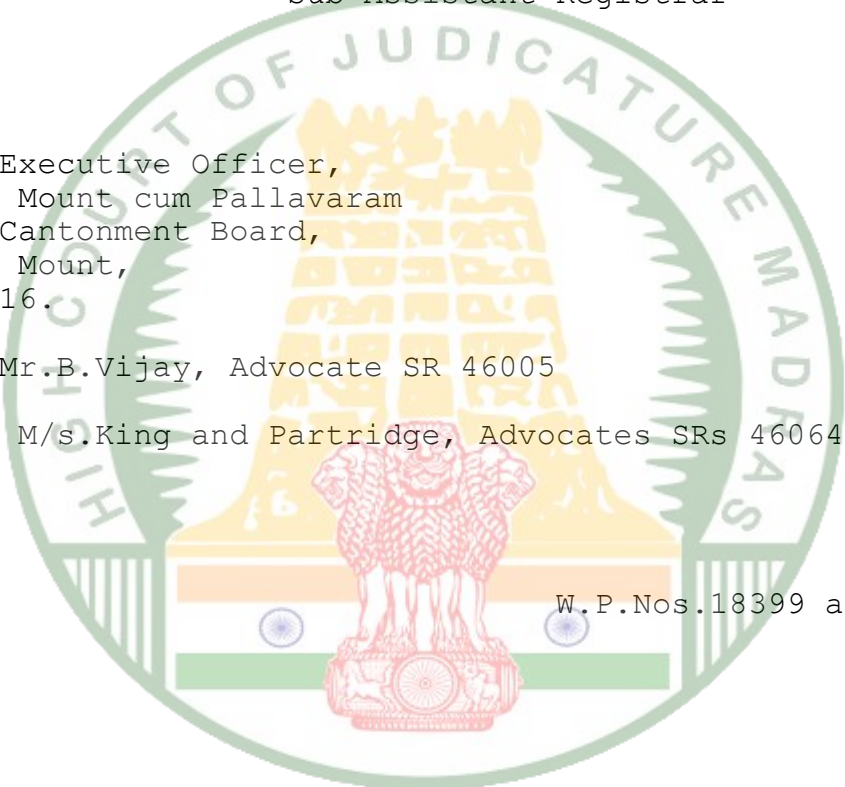
The Chief Executive Officer,
St. Thomas Mount cum Pallavaram
Office of Cantonment Board,
St. Thomas Mount,
Chennai - 16.

+ 1 cc to Mr.B.Vijay, Advocate SR 46005

+ 2 ccs to M/s.King and Partridge, Advocates SRs 46064 & 46065

bvr(co)
prk1/9

W.P.Nos.18399 and 25945 of 2015

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the lion capital is a red wheel. The entire emblem is set against a green background with a white border. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the emblem. At the bottom, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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