

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 25.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.14946 of 2016 &

W.M.P.No.13056 of 2016

J.Naval Kishore ... Petitioner

Versus

1.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai-600 003.

2.The Executive Engineer,
Corporation of Chennai,
Zone-V, No.61,
Basin Bridge Road, Chennai-60 0021.

3.J.Parasmal ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, to call for records pertaining to the impugned order passed by the second respondent herein in his proceedings Z.O.V.C.No/2260/2016, dated 23.03.2016 and quash the same.

For Petitioner : Mr.A.K.Raghavulu

For Respondents : Mr.P.V.Selvakumar for R1 and R2
Standing Counsel

Mr.Vikram V.Jain and
Mr.Bharat B.Jain for R3

O R D E R

Heard Mr.A.K.Raghavulu, learned counsel appearing for the petitioner; Mr.P.V.Selvakumar, learned Standing Counsel, accepting notice on behalf of the respondents 1 and 2 and Mr.Vikram V.Jain, learned counsel, accepting notice on behalf of the third respondent. With the consent of the learned counsel on either side, the Writ Petition is taken up for final disposal.

2. This is a second time the petitioner is before this Court for almost the same relief. Earlier, the petitioner filed a Writ Petition in W.P.No.40 of 2016, challenging the notice issued by the second respondent dated 21.12.2015, by which, the petitioner was directed to cease to occupy the premises on the ground that the premises is in dangerous condition. The petitioner stated before this Court that the building is not a hundred years old as claimed by the second respondent, but it is about 60 years old and the building which is in occupation of the petitioner is in good condition and does not required to be pulled down. The third respondent, who is none other than the petitioner's brother filed a counter affidavit stating that the building has been in existence since 1878 and it has served its life and liable for demolition.

3. After hearing the learned counsel for the parties and perusing the materials placed on record as well as the counter affidavit of the second respondent-Corporation, this Court pointed out that merely because the building is old i.e., more than 100 years, it does not mean that the buildings or structure is unsafe. It was further pointed that the Officials of the Corporation have to assess the structural stability of the building by conducting a proper inspection and such inspection should be in the presence of the persons who are in occupation of the building. Further, this Court noted that the petitioner's grievance was that the De-occupation Notice has been issued without conducting a proper inspection and without notice to the petitioner and therefore, this Court was inclined to direct the second respondent to conduct a fresh inspection. Accordingly, the Writ Petition in W.P.No.40 of 2016 was allowed, by an order dated 22.02.2016, the impugned De-occupation Notice was set-aside and the matter was remanded to the second respondent with a direction to issue notice to the petitioner, third respondent, the other tenants / occupants of the building and conduct a inspection in their presence and thereafter, proceed in accordance with law. A time frame of three weeks was stipulated to comply with the direction. Pursuant to which, the second respondent issued a notice on 03.03.2016 to the

petitioner as well as to the third respondent informing them that he is going to inspect the building on 09.03.2016 at 10.00 a.m. The inspection report which is impugned in this Writ Petition, dated 23.03.2016 clearly discloses that the petitioner, third respondent and the tenants were also present at the time of the inspection. In the impugned inspection report, the following observation related to stability was made by second respondent:-

"1. The wooden beams are used for carrying the loads. In ground floor rear South eastern side, the wooden beams are in damaged condition due to age and uneven loads come to this building due to neighbouring construction and also due to the damage caused by the insects. Due to the above damage the load bearing walls shinks and posing danger to the entire building.

2. There is no ventilation in ground floor and most of the walls are seems to be very weak and it may collapse at any time.

3. In first floor cracks are noticed at southern side and it is posing dangerous. In southern and western portion due to the penetration of drainage water in the roof the entire roof becomes very weak and portion of the roof ceiling falls at three locations.

4. In second floor the such shade was in dangerous condition and reinforcement are opened and the bathroom located at southern corner was in bad shape and there is no proper drainage system.

5. In third floor northern side load bearing walls in damaged condition and the lower room on western seems to be unused and in damaged stage."

On the above grounds, the second respondent is of the opinion that the building is not safe to be occupied and requires for demolition.

4. The learned counsel for the petitioner submitted that the certified copy of the order passed by this Court in the earlier Writ Petition was made ready only on 07.03.2016, but notice was issued by the second respondent on 03.03.2016, fixing the date of inspection on 09.03.2016. Therefore, it is submitted that the second respondent is acting at the behest of the third respondent.

5. The above submission is thoroughly misconceived for the simple reason that the Writ Petition was disposed of after hearing the parties and the parties were aware of the order passed by this Court and there is no other specific plea of mala-fide raised against the second respondent nor the Concerned Officer has been impleaded in his personal capacity. Therefore, the allegations that the proceedings were initiated on account

of biased attitude deserves to be rejected.

6. The second contention raised by the learned counsel for the petitioner is that the building which is in occupation of the petitioner is in good condition and in this regard, he seeks to rely upon a report of a Civil Engineer, Valuer (Land and Building), dated 29.12.2015 which was filed before this Court in C.S.No.193 of 1998. In my view, the petitioner cannot place reliance on the said report dated 29.12.2015 since that report precedes the order passed by this Court on 22.02.2016 in W.P.No.40 of 2016. The petitioner having accepted the order passed by this Court, cannot now seek to set-aside the impugned proceedings by relying upon a report which was filed in the Civil Suit which was much anterior to the order passed by this Court. Thus, the petitioner having accepted the order passed in the earlier Writ Petition cannot now seek to challenge the impugned proceedings on the said ground and therefore, the contention also deserves to be rejected.

7. Further more, the Inspecting Authority, viz., the second respondent has given certain reasons to support his findings that the building is unsafe. This Court exercising power under Article 226 of the Constitution of India, does not propose to act as an Appellate Authority or a Supervisory Authority over the findings rendered by the second respondent to assess the stability of the building. That apart, in the absence of any specific plea of mala-fide or any other technical violation such as violation of principles of natural justice, etc., this Court is not inclined to set-aside the impugned proceedings, which in effect is an inspection report holding that the building is not in a fit condition for occupation.

8. Hence for all the above reasons, no case is made out to interfere with the impugned proceedings. Hence the above Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Regist

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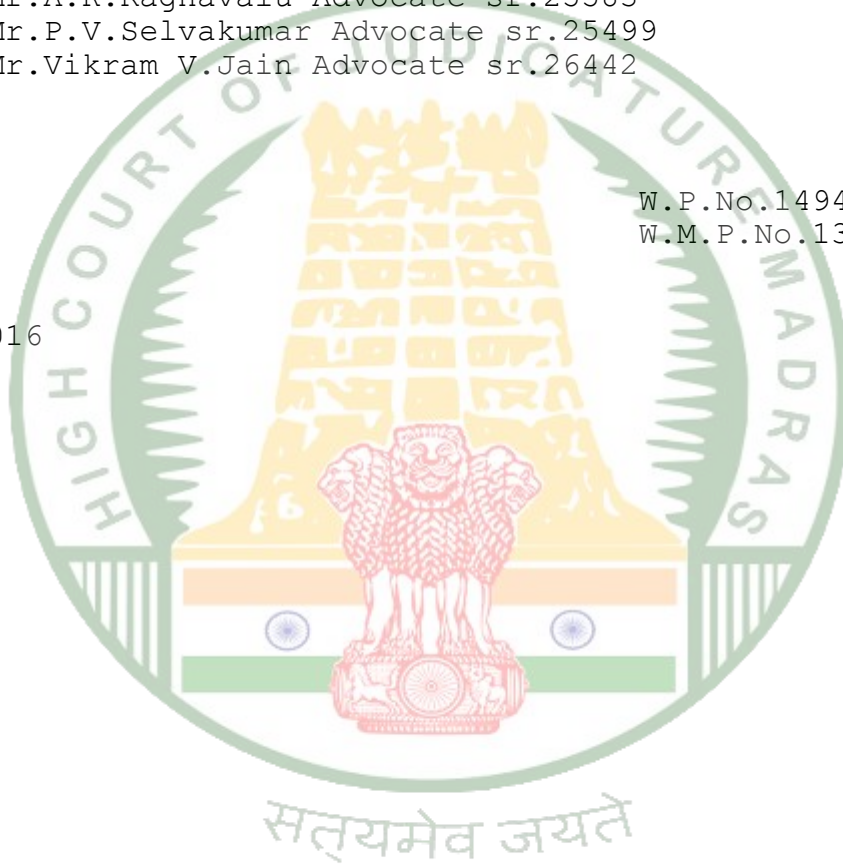
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+1 cc to Mr.A.K.Raghavalu Advocate sr.25583
+1 cc to Mr.P.V.Selvakumar Advocate sr.25499
+1 cc to Mr.Vikram V.Jain Advocate sr.26442

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