

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :26.07.2016

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.NO.605 OF 2010

A.Subramanyam

Proprietor

M/s.Subramanyam and Company,

No.140, Anna Pillai Street,

Chennai 600 079

.. Plaintiff

Versus

M/s.S.S.A.M.Shanmuga Nadar

A.Partnership Firm

represented by its partners

1. S.S.A.M.S.Ramasamy

2. S.S.A.M.S.Kathiresan

having its Office at No.25,

(Old No.12) Varathamuthiappan Street,

Chennai

.. Defendants

PRAYER: Plaint filed under Order VII Rule 1 and 2 of C.P.C and Order IV Rule 1 of the Original Side Rules, praying for the following judgment and decree against the defendant.

a) Directing the defendant to pay a sum of Rs.27,00,000/- being the damages suffered by the plaintiff, his business, property and person along with interest at the rate of 12% from the date of plaint till the date of payment;

b) for permanent injunction restraining the defendant, their agents, persons and servants from putting up any construction or development in the suit premises until the possession of the suit premises until the possession of the suit premises is obtained by the defendants, by due process of law;

c) for costs of the suit;

For Plaintiff : Mr.P.Subba Reddy for
Mr.K.Ramanatha Reddy

For Defendants : Mr.T.L.L.Ramakrishnan

J U D G M E N T

The suit is filed for directing the defendants to pay a sum of Rs.27,00,000/- and for permanent injunction.

2. The case of the plaintiff is that he is the tenant of a portion of the premises in No.140, Anna Pillai Street, Chennai 600 079 measuring about

396 sq.ft used for non residential purpose on a monthly rent of Rs.600/- since 1993. He was inducted by the original owner C.Radhakrishna Chettiyar. Subsequently, the defendants purchased the property in the year 1992 and the plaintiff had attained the said tenancy. The plaintiff is carrying on business as commission agent, dealing in rice, chillies and grains. The defendants attempted to evict the plaintiff even from the year 2007. As they were trying to disturb the electricity supply to the premises, the plaintiff herein filed a suit in O.S.No.3004 of 2007 on the file of XII Assistant City Civil Court, Chennai, for the relief of permanent injunction. The suit was decreed on 31.01.2008.

3. While so, the defendants with the influence of the employees of the Chennai Corporation, got issued a notice under Section 258(1) of the City Municipal Corporation Act, alleging that the building is to be repaired and maintained. The said notice was served on the plaintiff. It is the allegation of the plaintiff that taking advantage of the said notice, the defendants tried to trespass and demolish the suit building. Therefore, the plaintiff was constrained to file another suit in O.S.No.8211 of 2009 on the file of the VII Assistant City Civil Court, Chennai for permanent injunction restraining the

defendants from evicting the plaintiff from the suit property, except due process of law. The said suit is now transferred on the file of this Court and numbered as Tr.C.S.No.349 of 2012. The plaintiff also had filed W.P.No.26376 of 2008, praying to direct the Commissioner of Corporation of Chennai not to proceed with demolition of the suit building without hearing objections and affording an opportunity to the plaintiff. According to the plaintiff, the suit building is in a good condition, safe and tenantable condition. However, the Commissioner of Corporation had issued a notice under Section 258(1) of the City Municipal Corporation Act on 25.01.2010. Pursuant to which, the building was demolished by the defendants with the help of police by removing all the goods in trade, weighing machines, account books and all other articles. This again constrained the plaintiff to file another Writ Petition No.2289 of 2010 before the Division Bench of this Court. When the Writ Petition was taken up, it was represented by the Corporation that the building had been demolished by the defendants. Hence, the Writ Petition was disposed of. As the defendants themselves had demolished the suit property under the guise of the Section 258(1) Notice, the plaintiff was put to hardship. As he did not have sufficient time even to remove his stock in trade and other materials from the premises, the plaintiff

has filed the suit for the enormous loss caused due to the act of the defendants besides suffering mental agony. Hence, the suit has been filed for recovery of Rs.27,00,000/- from the defendants towards damages.

4. The said suit was resisted by the defendants, contending that the plaintiff was only a tenant in a smaller portion of a larger extent of 2373 sq.ft in door No.140, Anna Pillai Street. The building was of the year 1919 and it was in ruinous state. The larger extent of portion was in occupation of the defendants themselves and other tenants. When the defendants received the notice under Section 258(1) calling upon the owner to take necessary steps to safeguard public from the dilapidated building, the defendants had to necessarily obey the same. Though the notice was served on the plaintiff as an occupier, he refused to receive the same. The Corporation has specifically stated that the plaintiff refused to receive the notice issued under Section 258. The said notice was served on the plaintiff when he was present in the Court, pursuant to the direction of this Court. When the plaintiff was adamant in not evicting the premises and also not receiving the notice under Section 258, the defendants had at last pulled down the portion, which was in his occupation. Accordingly, the defendants

demolished the other portion, which resulted in the collapse of the portion in occupation of the plaintiff. Admittedly, the building was constructed in the year 1919 and the building had already developed cracks due to age. Therefore, the question of damages payable by the defendants do not arise much less when the plaintiff has not liquidated the sum claimed. The plaint is also bereft of any details with respect to the loss allegedly caused to the plaintiff. In fact, O.S.No.8211 of 2008 was filed by him after the issuance of the notice under Section 258.

5. It is further stated by the defendants that earlier the neighboring building owner had constructed Kalyana Mandapam for which, he had provided underground parking. The excavation work done for the same had resulted in cracks over the defendants' building which lead to the demolition of the same. Therefore, there is no cause of action for the plaintiff to claim any damages from the defendants. The plaintiff also had filed reply statement denying the contentions raised by the defendants in the suit.

6. This Court, upon a perusal of the pleadings and other materials

on record, has framed the following issues for consideration:

“1. Whether the building in the suit property occupied by the plaintiff was demolished by the defendant in an unauthorised and illegal manner on 01.02.201, throwing out the plaintiff, his son, the stock in trade, accounts weighing machine and other articles as indicated in the order in W.P.No.2289 of 2010 (Division Bench) dated 18.03.2010?

2. Whether the building in the suit land fallen down due to the demolition of the surrounding portions and due to old age as contended by the defendants ?

3. Whether the plaintiff is entitled to Rs.27,00,000/- with interest at the rate of 12% per annum from the date of plaint as damages for the unauthorised demolition of the building in the suit property, occupied by the plaintiff and for other illegal acts committed by the defendants?

4. Whether the plaintiff is entitled to permanent injunction, as prayed in prayer paragraph (b) of the plaint, till his possession of the property is taken over by due process of law.

5. Whether the plaintiff is entitled for a decree for

damages as claimed especially in the absence of specified plea of liquidated damages?

6. *Whether the plaintiff is in possession of the suit property as claimed?*

7. *To what other relief are the parties entitled?*

8. The plaintiff examined himself as P.W.1 and in lieu of chief examination, filed his proof affidavit and marked Exs.P1 to P18.

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	P-1	Certified copy of the decree passed in O.S.No.3044 of 2007 on the file of the City Civil Court, Chennai	-
2	P-2	True copy of the plaint in O.S.No.8211 of 2008 on the file of the City Civil Court, Chennai.	-
3	P-3	Notice issued by the Corporation of Chennai under Section 258 of the City Municipal Act	07.10.2008
4	P-4	Certified copy of the order in Writ Petition viz. W.P.No.26376 of 2008 on the file of the High Court, Madras.	01.09.2009
5	P-5	Certified copy of the order in Writ Petition viz W.P.No.2289 of 2010 on the file of the High Court, Madras	18.03.2010
6	P-6	Office copy of notice issued by the plaintiff to defendants	06.04.2010

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
7	P-7	Postal Acknowledgment of Ex.P6	-
8	P-8	Office copy of notice issued by the plaintiff to the defendants	29.04.2010
9	P-9	Postal acknowledgment of Ex.P8	-
10	P-10	Commercial Tax Assessment Order for the year 2007-2008 in respect of plaintiff	18.11.2009
11	P-11	Commercial Tax Assessment Order for the year 2009-2010 in respect of the plaintiff	30.06.2012
12	P-12	Copy of the objections filed before the Commissioner Corporation of Chennai by the plaintiff along with Engineer's report	-
13	P-13	Photo of suit building	-
14	P-14 Series (4 Nos)	Photos of suit building subsequent to Ex.P.13	-
15	P-15	CD's related to Ex.P.13 and Ex.P.14	
16	P-16	Xerox copy of postal receipt	29.01.2010
17	P-17	Xerox copy of acknowledgment card	-
18	P-18	Xerox copy of confirmation letter issued by the postal department	-

9. On the side of the defendants, D2 examined himself as D.W.1 and in lieu of chief examination, filed his proof affidavit and marked Exs.D1 to D12.

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	D-1	Affidavit of documents	-

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
2	D-2	Served copy of affidavit filed in A.No.199 of 2014 in C.S.No.605 of 2010	-
3	D-3	Affidavit filed in W.P.No.2289 of 2010	-
4	D-4	Original building plan approved by the Corporation of Madras on 07.02.1919	---
5	D-5	Original Encumbrance Certificate of the period from 01.01.2008 to 25.12.2012	---
6	D-6	Office copy of the notice	29.10.2008
7	D-7	Postal acknowledgment Card	---
8	D-8	Bill issued by the Kavitha Studio and Colour Lab	25.09.2008
9	D-9	Corporation passed final order on 25.01.2010	---
10	D-10	Certified copy of the judgment passed by the Hon'ble High Court in O.A.No.736 of 2010	18.08.2010
11	D-11	Certified copy of the judgment	18.09.2012
12	D-12 Series	Photographs with negatives	---

10. Issue Nos.1 and 2:

a) The case of the plaintiff is that the defendants had deliberately demolished the building which had resulted in severe damage to the plaintiff's business. It is the further case that the plaintiff had filed O.S.No.3004 of 2007 on the file of the XII Assistant Judge, City Civil Court,

Chennai and permanent injunction was granted against the defendants in the suit. It is seen from Ex.P.3 that a notice under Section 258 of the City Municipal Corporation Act was issued to both the owner and occupier. But the plaintiff seems to have refused to receive the notice, which was later served on him in the Court on the direction given by this Court. The copy of the decree in O.S.No.3004 of 2007 is marked as Ex.P.1 and the copy of the plaint in O.S.No.8211 of 2008 is marked as Ex.P.2. The plaintiff also had filed Ex.P.4, which is the copy of the order in Writ Petition No.26376 of 2008, in which, a direction was passed by this Court to afford all opportunities to the plaintiff before passing the orders in the proceedings initiated under Section 258(1) of the Act. Accordingly, the plaintiff was afforded an opportunity to file the objections before the Commissioner of Chennai along with the report of the Engineer to show that the building was in safe condition. But the Commissioner passed orders without inspecting the suit premises and only on considering the Engineer's report. Taking advantage of the said order, it is contended that the defendants had demolished the building and the stock in trade of the plaintiff was thrown on the street. The plaintiff not stopping with that, had filed a Writ Petition No.2289 of 2010 under Ex.P.5 before the Division Bench of this Court making the Commissioner of Corporation of

Chennai as a party. It was reported in the Court that the demolition was only by the defendants pursuant to the notice and not by the Corporation.

b) The order passed in W.P.No.2289 of 2010 on 18.03.2010 is as follows:-

“7. We do see considerable force in the contention of the learned counsel for the petitioner. The Corporation cannot be a tool in the hands of property owners to evict their tenants without initiating proceedings for eviction. It is true that Section 258 enables the Commissioner to require the owner or occupier of a building found in a ruinous state of dangerous condition, to fence off, take down, secure or repair, so as to prevent danger to the public. The said provision has to be used for bona fide purposes and reports regarding dilapidated condition of the building should be available with the Corporation Commissioner with respect to the building before taking action under Section 258 of the Act.

8. when there is a complaint of structural instability, a duty is cast on the Commissioner to verify the bona fides of the complainant and before passing orders

under Section 268 of the Act, he should take a factual report from the Corporation Engineer. In case such measures are taken, complaints like the one raised by the petitioner could be avoided.

9. *Though the petitioner highlighted the highhanded attitude of the third respondent in demolishing the building without filing the eviction petition on the ground of demolition and reconstruction, no relief could be granted to the petitioner in respect of the action taken by the first respondent under Section 358 of the Act on account of the subsequent developments in demolishing the very structure itself. However, we are of the view that liberty should be given to the petitioner to proceed against the third respondent for demolishing the building during the subsistence of the lease and evicting the petitioner in an unceremonious manner.”*

Embolden by the order given by this Court, the above suit has been filed by the plaintiff. The said notice was also been issued by the plaintiff. It is pointed out by the learned counsel for the defendants that the Writ Petition was filed in W.P.No.2289 of 2010 on 04.02.2010, the plaintiff had not whispered about the demolition of the building. The building was allegedly

demolished on 01.02.2010 whereas, the Writ Petition was filed only on 04.02.2010 for a certiorarified mandamus, calling for the records of the first respondent, namely, the Commissioner of Corporation with respect to the order of the Corporation to demolish the building. Even as on date of the filing of the writ petition, the building was not there and it was already pulled down. The plaintiff had alleged that due to the highhanded act of the defendants colluding with the police personnel and unruly rowdy elements had caused damage to the building in occupation of the plaintiff resulting in loss to the goods, machineries, office accounts, goodwill and other material stored in the premises. Though the plaintiff has claimed an annual turnover of Rs.50 lakhs, he has made a claim of Rs.27 lakhs damages payable by the defendants. However, no evidence has been produced by the plaintiff to establish the actual loss caused. It has been the contention of the plaintiff that the demolition is pursuant to Section 258 notice and it is the Corporation, which is acted highhanded to benefit the defendants pursuant to the notice under Section 258. Though the plaintiff had alleged that only the Corporation of Chennai had demolished the structure and came to know about the fact that, it was only the defendants would demolish when the writ petition was filed before this Court. The demolition had happened only

pursuant to the statutory notice under Section 258(1) of the City Municipal Act issued by the Commissioner by its order dated 25.01.2010.

c) It is the definite case of the plaintiff that the Commissioner did not consider the objections though he had enclosed a report of a qualified Engineer with respect to the condition of the building. When he has made an allegation against the Corporation of Chennai, it is to be noted that the Corporation was not made a necessary party in the suit. When the alleged demolition by the defendants is only pursuant to the statutory notice and admittedly when the building is of the year 1919, which is quite old and weak in structure, the defendants cannot be found fault with for razing it down the same. In view of the above findings, the defendants had not demolished the building unauthorisedly, but only pursuant to the suit notice.

11. Issue No.3: In the light of the above findings, in the absence of any evidence for the actual loss alleged to have incurred by the plaintiff, the plaintiff is not entitled to the damages as claimed.

PUSHPA SATHYANARAYANA, J

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12. Issue No.4: As the building was already demolished, the plaintiff is out of possession and in view of the dismissal of the suit Tr.C.S.No.349 of 2012, this issue is answered against the plaintiff.

12. In the result, the Civil Suit is dismissed. No costs.

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Index : Yes/No

Internet : Yes/No

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