

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 9.08.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.No.9604 of 2015

and

M.P.No.1 of 2015

Sathish Kumar

... Petitioner

Vs.

1. The Commissioner of Corporation,
Corporation of Chennai,
Rippon Buildings,
Chennai.
2. The Regional Deputy Commissioner of Corporation,
No.62, Basin Bridge Road,
Chennai-21.
3. K.Murali,
Proprietor of Malick Medicals,
New No.108 (Old No.180),
N.S.C. Bose Road,
Edapalayam,
Chennai-600 079.
4. P.Zainudheen,
"Sovereign Travel Goods",
New No.108 (Old No.180),
N.S.C. Bose Road,
Edapalayam, Chennai-600 079.
5. Vathsavaradhan
(R-5 impleaded vide order dated 20.6.2016
in M.P.No.2 of 2015) ... Respondents

This writ petition has been filed, under Article 226 of the Constitution of India, praying that this Court may be pleased to issue a Writ of Mandamus, directing the first and the second respondents to demolish the subject building of this writ petition, in accordance with law.

For Petitioner : Mr.Perumbulavil Radhakrishnan
For Respondents : Mr.P.V.Selvakumar for RR1 and 2
Mr.K.Shakespeare for R-3
Mr.R.Parthasarathy for R-4

ORDER

Heard the learned counsel appearing on behalf of the petitioner and the learned counsels appearing on behalf of the respondents.

2. This writ petition has been filed by the petitioner praying that this Court may be pleased to issue a Writ of Mandamus, directing the first and the second respondents to demolish the building in question and to take appropriate action, in accordance with law.

3. The petitioner has stated that he had purchased the property, described in the schedule furnished in the affidavit filed in support of the writ petition (hereinafter referred to as "the subject property), along with his wife N.S.Padma Rani, jointly. The subject property had been purchased from N.V.Vathsavardhan, by way of registered sale deeds, dated 22.8.2014, bearing document Nos.1182/2014 and 1183/2014 and the registered sale deeds, dated 1.8.2014, bearing document Nos.1227/2014 and 1228/2014. The property, bearing new Door No.180, is situated in Netaji Subash Chandra Bose Road, George Town, Chennai, having an extent of 1995 sq.ft. It has been further stated that the third and the fourth respondents are the tenants of the vendor of the property. After the petitioner had purchased the subject property, the third and the fourth respondents had started denying the title of the petitioner, in respect of the said property, illegally. Therefore, the petitioner had been forced to file Rent Control Original Petitions, in R.C.O.P.Nos.305 of 2015 and 306 of 2015, against the third and fourth respondents, respectively. The said petitions have been filed for the eviction of the third and the fourth respondents, on the ground of denial of title, owners' occupation and for demolition and reconstruction of the property in question.

4. It has been further stated that the building in the subject property is about 108 years old and it is in a dilapidated condition. It is unsafe and unfit for human habitation. The walls are load bearing and the building had been constructed in mud and lime mortar. The roof has also become

weak. Trees had started growing, on the walls and on the roofs. There are many cracks in the building. As such, the building in question, which is the subject property, has to be demolished, so as to prevent any loss of human lives and properties. In spite of the petitioner making several representations to the authorities concerned, no action had been taken to demolish the dilapidated building in question. In fact, the third respondent is running an Allopathy pharmacy in the building in question and a number of patients are visiting the place, frequently. Since the request made by the petitioner, for the demolition of the building, had not been acted upon, by the officials of the respondent Corporation, the petitioner has preferred the present writ petition before this Court, praying for a direction to the authorities concerned to take an appropriate action, for the demolition of the building, in accordance with the provisions of Section 258 of the Chennai City Municipal Corporation Act, 1919.

5. In the report filed by the Executive Engineer, Zone-5, Corporation of Chennai, dated 22.07.2016, it has been stated that the inspection of the building in question was carried out, on 20.11.2015. It has been stated that the building had been constructed with brick masonry and lime mortar. It has also been stated that cracks had been formed at various places and the walls are badly damaged.

6. It has been further stated that, since the building is located in a busy commercial area, in Netaji Subash Chandra Bose Road, Chennai, it could cause danger to the public, who are using the area, adjacent to the building in question. It has been found that the third and the fourth respondents are the tenants in the dilapidated building. The third and the fourth respondents are carrying on business in the said building, under the name and style of M/s.Malick Medicals, and M/s.Sovereign Travel Goods Industry. It has also been stated that, as per the direction issued by this Court, the Executive Engineer, Zone-5, Corporation of Chennai, inspected the building, at Door No.180, Netaji Subash Chandra Bose Road, Chennai, on 22.7.2016, after prior intimation had been given to the owners and the tenants. During the inspection, the following defects had been observed, which are as follows :

- "a.Materials used brick with lime mortar
- b.The total extent of the property is around 2000 sq.ft. and consisting of ground floor and first floor.
- c.The building is of Madras Terrace with tile roofing.
- d.The loadbearing walls with wooden structures all over the building.

- e.The age of the building is approximately 100 years old.
- f.The wooden beams are weak in several places.
- g.The wooden stair case leading to first floor is in dangerous condition."

7. The learned counsels appearing for the respondents 3 and 4 had submitted that the report filed by the respondent Corporation has no merit, as it has been filed before this Court, on the instigation of the petitioner, with mala fide motive, in order to substantiate the claims made by the petitioner, in R.C.O.P.Nos.305 and 306 of 2015.

8. The learned counsel appearing on behalf of the third respondent had submitted that the third respondent had filed an application, questioning the maintainability of R.C.O.P.No.305 of 2015 and the matter is pending enquiry before the Rent Controller. He had further submitted that the writ petition, filed by the petitioner, is an abuse of the process of the Court.

9. He had further submitted that the present writ petition had been filed in order to circumvent the adjudication process, which is in progress before the Rent Controller. The allegation that the third respondent is attempting to grab the said property is false. The third respondent has been in possession and enjoyment of the said property, for over four decades. The third respondent is carrying on business, in the name and style of "M/s.Malick Medicals", in the subject property. The building in question is in a good and habitable condition. Therefore, it is not open to the petitioner to seek a direction from this Court, to the respondent Corporation, to demolish the building in question, invoking Section 258 of the Chennai City Municipal Corporation Act, 1919. It has also been stated that the petitioner has preferred the present writ petition, in order to get over the requirements contemplated under Section 10(2)(vii) and Section 14(i)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

10. The learned counsel appearing on behalf of the third respondent had relied on the following decisions of the Supreme Court and of this Court, in support of his contentions :

- (i) Makarand Dattatreya Sugavkar Vs. Municipal Corporation of Greater Mumbai and others [(2013) 9 SCC 136];
- (ii) Rema Devi Vs. The Commissioner, Corporation of Chennai and others [W.P.No.22620 of 2012, dated 10.4.2013]

11. The learned counsel appearing on behalf of the fourth respondent has submitted that the fourth respondent was running a firm, in the name and style of "Sovereign Travel Goods Industries", in the building in question, as a tenant. He has further stated that, on 20.8.1995, an agreement of sale had been entered into between the impleaded respondent and the fourth respondent, for the sale of the western wing of the property in question. Pursuant to the said sale agreement and in view of the part performance thereof, he was put in possession of the said property, on 28.8.1995, on receipt of Rs.5,00,000/-, as advance. There is no relationship of landlord and tenant between the petitioner and the fourth respondent. The fourth respondent had been in possession and enjoyment of the property in question, from 28.8.1995.

12. He had further submitted that the petitioner has initiated rent control proceedings, against the fourth respondent, in R.C.O.P.No.306 of 2015, for the delivery of vacant possession of the property in question. One of the grounds raised therein is demolition and reconstruction. Further, the petitioner and his wife had filed a civil suit, before this Court, in C.S.No.63 of 2016, to declare them as the absolute owner of the property in question and to direct the fourth respondent to deliver vacant possession of the said property. While so, the petitioner has preferred the present writ petition before this Court, by making false allegations against the fourth respondent.

13. The learned counsel had further submitted that the respondent Corporation has no authority or jurisdiction to invoke the provisions of Section 258 of the Chennai City Municipal Corporation Act, 1919. The officials of the respondent Corporation are acting hand in glove with the petitioner, in order to give him an advantage in the rent control proceedings filed by the petitioner against the fourth respondent. The building in question is in a safe and sound condition. It is not in a dilapidated state, as mentioned in the report filed on behalf of the respondent Corporation. He had further submitted that it may be open to the petitioner to mark the report of the respondent Corporation in the rent control proceedings, which is pending before the Rent Controller and to summon the officials concerned, as witnesses, in support of the claims made by the petitioner. However, it is not open to the petitioner to raise such issues before this Court, collaterally, after the petitioner had initiated the rent control proceedings, before the Rent Controller, for the eviction of the fourth respondent and for the declaration of his title, before this Court, in C.S.No.63 of 2016.

14. In view of the submissions made by the learned counsels appearing on behalf of the parties concerned and on perusal of the records available and on considering the decisions, cited supra, it is noted that the petitioner has preferred rent control proceedings, in R.C.O.P. Nos.305 and 306 of 2015, before the Rent Controller, for eviction of the third and fourth respondents, respectively. He has also filed a civil suit, before this Court, in C.S.No.63 of 2016. The third respondent has also filed a civil suit, in C.S.No.721 of 2015, in respect of the property in question. The rent control proceedings had been initiated, by the petitioner, to evict the respondents 3 and 4 herein, who are said to be the tenants and they are in occupation of the building in question. Further, the petitioner has preferred the civil suit, in C.S.No.63 of 2016, praying for a declaration of his title and for certain other directions.

15. It is found, by this Court, that the allegations made, by the third and the fourth respondents, that the petitioner has preferred the present writ petition, only with the mala fide motive of getting the building in question demolished, by the respondent Corporation, and in order to support his claims made in the rent control proceedings, have not been substantiated, by sufficient evidence. However, in view of the fact that the petitioner has preferred rent control proceedings, before the Rent Controller, for the eviction of the respondents 3 and 4 herein, who are said to be the tenants, and as he has filed a civil suit, before this Court, for the declaration of his title, in respect of the property in question, by way of a civil suit, in C.S.No.63 of 2016, this Court finds it appropriate to hold that it is for the petitioner to establish his title and his other rights in the said proceedings. It may also be open to him to substantiate his claim, with regard to the dilapidated state of the building in question, situated in the subject property, by marking the report of the respondent Corporation and by summoning the officials concerned, as witnesses therein.

16. In such circumstances, it may not be appropriate for this Court to issue a Writ of Mandamus, as prayed for by the petitioner, in the present writ petition, at this juncture, when the petitioner has availed the alternate remedies available to him, under the relevant provisions of law, before the appropriate fora. Therefore, this Court is constrained to reject the request of the petitioner, to direct the respondent Corporation, to demolish the building in question, by invoking the provisions of Section 258 of the Chennai City Municipal Corporation Act, 1919. Hence, the writ petition stands dismissed. No costs. However, this Court does not intend to interfere with the power of the respondent Corporation to initiate an independent action, in respect of the building in

question, invoking the provisions of Section 258 of the Chennai City Municipal Corporation Act, 1919, if it finds that the said building is in a dilapidated state, causing danger to the public and to the occupants of the said building, as the said section provides the power to the authorities concerned to initiate appropriate action, based on the facts and circumstances of the particular case. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vvk

To

1. The Commissioner of Corporation,
Corporation of Chennai,
Rippon Buildings,
Chennai.
2. The Regional Deputy Commissioner of Corporation,
No.62, Basin Bridge Road,
Chennai-21.

+1cc to Mr.K.Shakespeare, Advocate, S.R.No.45110

+1cc to Mr.P.V.Selvakumar, Advocate, S.R.No.45115

+5cc's to Mr.Perumbulavil Radhakrishnan, Advocate, S.R.No.45266

+2cc's to M/s.Satish Parasaran, Advocate, S.R.No.45377

W.P.No.9604 of 2015

MP 1(CO)
CA(17/08/2016)

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