

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.02.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.40 of 2016

&

W.M.P.No.6 of 2016

J.Naval Kishore
S/o. R.Jayanthraj

...Petitioner

Vs.

1.The Commissioner
Corporation of Chennai
Ripon Building
Chennai-600 003

2.The Executive Engineer
Corporation of Chennai
Zone-V. No.61,
Basin Bridge Road
Chennai-600 021

3.J.Parasmal

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records pertaining to the impugned notice in DN.57/11760/2015 dated 21.12.2015 issued by the 2nd respondent to the petitioner and quash the same.

For Petitioner : Mr.A.K.Raghavulu

For Respondents : Mr.P.V.Selvakumar for R1 and 2

Mr.Vikram U Jain for R3

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O R D E R

Petitioner and the 3rd respondent are brothers, both being sons of one R.Javanthraj.

2. The challenge in this writ petition is to a De-occupation Notice issued by the 2nd respondent, Executive Engineer, Zone V, Corporation of Chennai, dated 21.12.2015. The petitioner has

been advised to discontinue occupation of the premises since the building is more than 100 years old. The petitioner would state that the notice issued by the 2nd respondent is unsustainable and it is at the instigation of the 3rd respondent, who has approached the Civil Court for partition and final decree application is pending. Further, it is submitted that the building is in good condition and does not require to be pulled down. The 3rd respondent had filed an application for appointment of an Advocate Commissioner in the suit to note down the physical features of the property as well as the condition of the building and in such application filed by 3rd respondent, learned Advocate Commissioner had submitted a report in November 2007, stating that on enquiry with the plaintiff and the defendant and also on the opinion of the Engineer, the building would be more than 60 years old. There are other allegations made by the petitioner as against the 3rd respondent and vice versa which need not be gone into this writ petition.

3. Counter affidavit of the 2nd respondent states that the building has been in existence since 1878 and it has served its life and liable for demolition. The petitioner would state that the building is in sound condition and it does not require demolition and the De-occupation Notice issued by the 2nd respondent is motivated and tainted with malafide and has been issued under the behest of the 3rd respondent.

4. After hearing the learned counsel for the parties, and perusing the materials placed on record as well as the counter affidavit of the 2nd respondent, it is to be noted that merely because the building is a old building more than 100 years old, it does not mean that the building or structure is unsafe. 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.

5. However, in the counter affidavit filed, the emphasis appears to have been only to the age of the building stating that it has been in existence since 1878. Since the petitioner's grievance is that the impugned De-occupation Notice has been issued without conducting a proper inspection and without notice to the petitioner, this court is inclined to direct the 2nd respondent to conduct a fresh inspection after notice to all concerned.

6. Accordingly, the writ petition is allowed, the impugned proceedings are set aside and the matter is remanded to the 2nd respondent who shall issue notice to the petitioner, 3rd respondent, the other tenants/occupants of the building and conduct an inspection in their presence and thereafter proceed in accordance with law. The above direction shall be complied within three weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

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

2.The Executive Engineer,
Corporation of Chennai,
Zone-V. No.61,
Basin Bridge Road,
Chennai-600 021.

+1cc to Mr.Vikram U Jain, Advocate, S.R.No.10845
+1cc to Mr.A.K.Raghavulu, Advocate, S.R.No.10834
+1cc to Mr.P.V.Selvakumar, Advocate Sr.10741

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ak(CO)
srg(04/03/2016)

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