

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2016

C O R A M

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.4070 of 2016

and

WMP.No.3410 of 2015

K.Majeed Basha

Petitioner

Vs

1. The Commissioner
Corporation of Chennai,
Rippon Buildings, Chennai.
2. The Executive Engineer
Zonal Office - 5
Corporation of Chennai
No.61, Basin Bridge Road
Chennai - 600 021
3. Assistant Engineer
G.B. Road Section
CEDC/Central/Tangedco,
Anna Salai, Chennai - 6
4. M/s. R.K.Real Estates and Investments
Rep.by its Partner
Mr.P.Sri Ram Kumar
No.37, General Peters Road,
Chennai -600 002.

5. Raja Babu Jayaprada @ Raj Theatres
rep.by Raja Babu Partner,
(impleaded by order dated 18.3.2016
in WMP.No.8268 of 20016

Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus calling for the records of the 2nd respondent's notice dated 06.01.2016 in Notice No.Dn.631/11287/2015 to quash the same and to consequently forbear the respondents 1 to 4 from in any way disturbing the peaceful possession and enjoyment of the petitioner in the petition premises in contravention to the proceedings, in O.S.No.6878 of 2015 on the file of the XIV

Assistant Judge, City Civil Court, Chennai and RCOP.No.1753 of 2015 before XI Small Causes Judge except under the provisions of TNBL &R (Tamil Nadu Buildings (Lease and Rent) Control Act 1974.

For Petitioner ... Mr.M.N.S.Mohammed Habeeb Raja
For R1 to R3 ... Mr. P.V.Selvakumar
For R4 ... Mr.A.G.Raja Kumar

For R5 ... Mr.Raja babu
party-in-person

O R D E R

Heard Mr.M.N.S.Mohammed Habeeb Raja, learned counsel appearing for the petitioner, Mr.P.V.Selvakumar, learned counsel appearing for the respondents 1 to 3, Mr.A.G.Rajakumar, learned counsel appearing for the fourth respondent and Mr.Raja babu, fifth respondent, party-in-person.

2. Petitioner is a tenant under the respondents 4 and 5. There is a dispute between the landlord and tenant and the petitioner has filed a suit in O.S.No.6878 of 2015 on the file of the XIV City Civil Court, Chennai praying for a decree of permanent injunction against the defendant / fourth respondent herein not to interfere with the peaceful possession of his shop. In the suit, the first defendant/ fourth respondent herein is represented by his power agent, the fifth respondent in this writ petition. The second defendant is the Assistant Engineer of the Electricity Board. The suit is pending and there is no interim order. The petitioner has also filed a petition under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent) Control Act 18 of 1960 as amended by Act 23 of 1973 before XI Small Causes Court, Chennai, in RCOP.No.1753 of 2015 seeking permission to deposit monthly rents at the rate of Rs.6,500/- per month from June 2015 to September 2015. The said RCOP is also pending and the respondents are yet to file their counter. Thus, the above facts show that the landlords have not moved an eviction petition to evict the petitioner from the premises in question and no RCOP is filed by them and both the cases which are now pending are those filed by the petitioner himself.

3. In this writ petition, the validity of the proceedings issued by the second respondent is in question. The impugned proceedings is a notice issued to the petitioner to desist from the occupation of the premises at the ground floor as the premises have become unsafe and the same been classified as dangerous building.

4. The learned counsel for the petitioner challenges the impugned proceedings primarily on two grounds. The first contention of the learned counsel for the petitioner is that the ground floor premises, where the petitioner is carrying on business in sale of radiators, is absolutely safe. Secondly, it is contended that the action of the second respondent is in collusion with the private respondents and it lacks bona fide.

5. To interfere bias or mala fide or malice unless and until there are specific allegations made out by a party alleging the same by impleading the persons concerned, the same cannot be examined in any proceedings before the Court of law. In the instant case, there is no specific averment against a particular officials of the Corporation of Chennai for this Court to examine the allegations of mala fide or bias or malice. The second issue pointed out by the petitioner is that the portion, which is occupied by him is in ground floor and it is in safe condition. However, petitioner's endeavor is that he is not aware on what basis the impugned proceedings has been issued, which presumably should have been issued after inspection.

6. It is the specific case of the petitioner that the premises in question has not been inspected and notice of inspection has not been issued to him. This averment is denied by the respondents. But however, without going into the controversy as to whether notice of inspection has been issued or not, since the matter has come to the scrutiny of this Court, this Court is of the view that fresh inspection should be conducted by the second respondent in the presence of all the parties.

7. In the light of the above discussion, while declining to grant the relief sought for by the petitioner, there will be a direction to the second respondent to conduct inspection of premises, after issuing notice to the petitioner and the respondents 4 and 5, and based on such inspection, the second respondent shall proceed further in accordance with law. The inspection shall be conducted within a period of three weeks from the date of receipt of a copy of this order.

8. With the above direction and observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Commissioner
Corporation of Chennai,
Rippon Buildings, Chennai.

2. The Executive Engineer
Zonal Office - 5
Corporation of Chennai
No.61, Basin Bridge Road
Chennai - 600 021

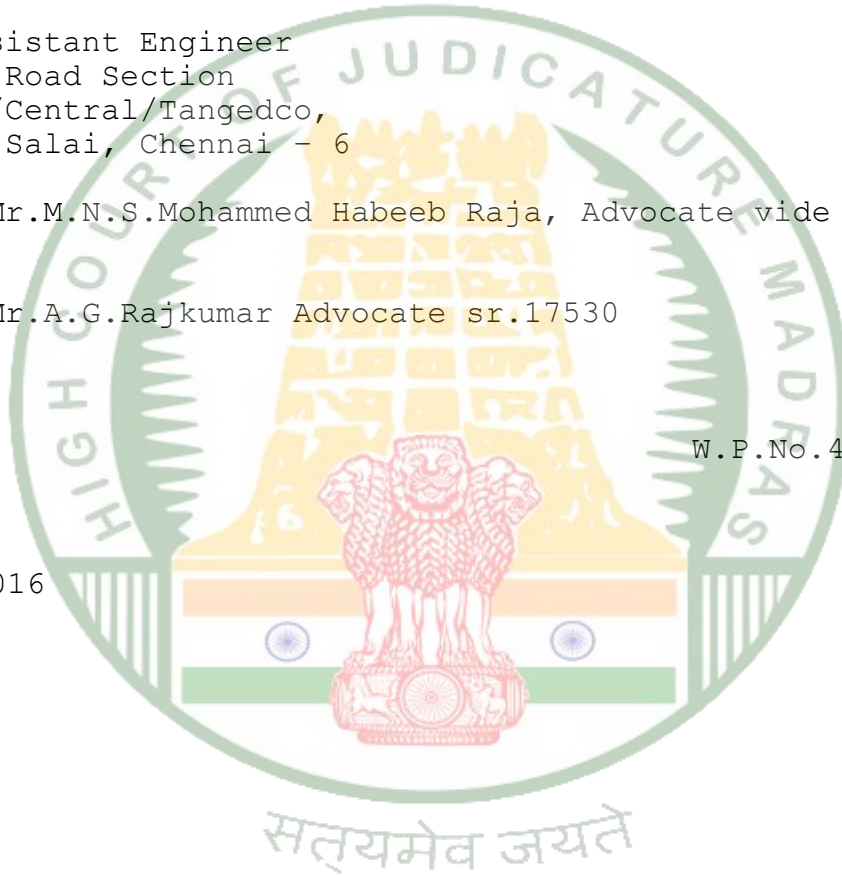
3. Assistant Engineer
G.B. Road Section
CEDC/Central/Tangedco,
Anna Salai, Chennai - 6

+1 cc to Mr.M.N.S.Mohammed Habeeb Raja, Advocate vide
sr.17485

+1 cc to Mr.A.G.Rajkumar Advocate sr.17530

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