



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2016

CORAM:

WEB COPY

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P(MD) Nos.19350 and 19351 of 2015
and
M.P(MD)No.1 and 1 of 2015

D.Lingammal

.. Petitioner in both WPs

Versus

1. The Commissioner,
Kovilpatti Municipality,
Kovilpatti - 628 501.

2. The Revenue Officer,
Kovilpatti Municipality,
Kovilpatti - 628 501.

.. Respondents in both Wps

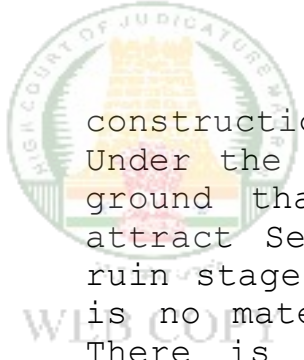
Prayer in both petitions: Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari to call for the records relating to the proceedings in Na.ka.N.9856/2015/A3 dated 30.09.2015 on the file of the first respondent herein in respect to Shop No.4 and 5 respectively in weekly market, Main Road, Kovilpatti - 628 501 are concerned and to quash the same.

For petitioner : Mr.S.R.Sadhan Boopathy for
in both Wps Mr.S.Subbiah
For respondents : Mr.M.Saravanan for R1
in both Wps

ORDER

In both the writ petitions, the petitioner, who are one and the same, challenges impugned proceedings dated 30.09.2015 on the file of the first respondent in respect of the Shop Nos.4 and 5 respectively in weekly market, Main Road, Kovilpatti - 628 501.

2. The main ground of attack in these writ petitions is that even as per the resolution dated 14.09.2015, it cannot have any force relating to the shop portions belonging to the petitioner, as some of them do not form part of the bus stand and it was always open to the first respondent municipality to put up whatever



construction in the extension or renovation of the Anna Bus Stand. Under the said order, their building cannot be demolished on the ground that the building is in a dilapidated condition. To attract Section 218 of the Act, the building must be such in a ruin stage and the dangerous to the process, and absolutely there is no material for the municipality to arrive at a conclusion. There is no report to the effect that the building is in a dangerous condition. Further, the main contention of the petitioner is that the building itself was constructed by her. Since the building is in owned by the petitioner, the municipality cannot have any right to pass any resolution prejudicial to her interest. Lastly, she would also contend that the Municipal Council cannot pass any resolution as to how the Executive Authority shall discharge function under Section 218 of the Act. Therefore, she would contend that the order passed by the respondents is illegal.

3. As per counter affidavit, the buildings were constructed in the year 1983 and 1985 and there were 33 licensees and the whole buildings are in a dilapidated condition. The respondent municipality obtained a report from the Government College of Engineering, Tirunelveli, even in the year 2013, which clearly states that the buildings are in a dilapidated condition. Therefore, notice was given to the licensees to vacate the shops for commencing construction. Earlier some of the licensee filed the writ petition in W.P(MD)No.4332 of 2013 and by an order dated 15.04.2013, the petitioners were directed to hand over possession to the municipality to take up for demolition. When the steps were initiated for demolition, out of 33 licensees, 31 had vacated and the petitioner alone, who is the licensee of shop Nos.4 and 5, has not vacated. Instead, she has filed these writ petitions. The allegation that the shops does not form part of the bus stand was specifically denied. In fact, the petitioner has admitted that the portion of the shops are in bus stand which is in part of survey No.30. The municipality has already invited tender and the construction is already going on and the time limit is only 15 months. In fact, the respondents also would contend that in the proposed construction, the petitioner's son, namely, A.K.D.Devaraj has participated in the auction and has taken two shops, which are yet to be confirmed.

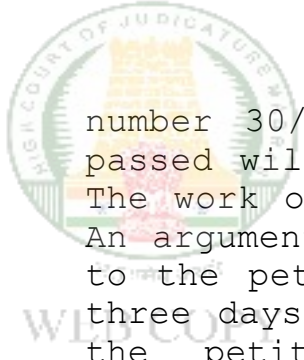
4. Further, the respondent municipality have produced the original record, namely, Kovilpatti Municipality Minutes Book to show what was leased out to them wayback in the year 1987, which clearly states that wayback in the year 1987, it was only the building shop and not the vacant site and therefore, the petitioner has not putting up any constriction. Therefore, the petitioner cannot now claim to put up the shops. In resolution No.816 dated 28.05.1987, the petitioner shops' auction was confirmed. Therefore, the allegation that it is only a vacant site or that the buildings belong to her also is wrong. In fact,



the respondents' counsel has also produced the photograph, wherein it is categorically stated that the entire area has been vacated and new bus stand is coming up, expecting these two shops, which are obstructing the very construction.

5. Heard both sides.

6. On a careful perusal of the entire records, one thing is clear the first contention that the property namely, shops are owned by the petitioner, cannot be accepted, in view of the original records produced, namely, the minutes book, which categorically states that the petitioner, Lingammal sought for extension of the lease deed in respect of the shops for three years as her original lease with expiry from 07.06.1987. In that resolution itself, it is very clearly stated that her demand for extension in respect of the lease has been extended for payment of 15% increase, which clearly denotes the shops. Therefore, the allegation that the petitioner is the owner of the property, is not correct and they are only the licensee. Secondly, in the earlier round of litigation, all the shops were directed to be evicted and as per the photographs as well as the detailed counter, it is very clear that all the 31 shops have been demolished and only these two shops are there. The main arguments was that under Section 218, the authority cannot pass an order and there is certain procedure it has to be followed. But here is the case, where it is very clear that they have taken the opinion of the Engineer and thereafter, came to the conclusion that the buildings are in a dilapidated condition. In fact, the entire big photograph of the area also produced, which are clearly proved beyond the reasonable doubt, that the buildings are in a dilapidated condition. Further in the counter, the respondent municipality have categorically stated that the Department of Technical Education, Tamil Nadu giving the stability certificate of structural stability of the building to the effect that the building is under bad shape and renovation is not possible, and therefore, it is recommended to demolish the building. In fact, in the earlier order of this Court, in W.P(MD)No.4332 of 2013 batch, this Court categorically stated that the Commissioner of Kovilpatti Municipality, who was directed to take steps for demolition in accordance with the undertaking given in paragraph 3 of the counter affidavit. It is made clear that in case the Commissioner of Kovilpatti Municipality violates the undertaking given to this Court, appropriate proceeding for contempt will also be taken. In fact, in that writ petition itself, this Court has recorded where the same petitioner's counsel has clearly stated that the petitioners are not against demolition and reconstruction of the building and they only doubt the *bona fide* of the notice and that was the reason to file the writ petition by the petitioners. Of course, an argument was made that the writ petition relates to another survey number. But in the counter affidavit it has been clearly pointed out that survey



number 30/1 also includes in this case. Therefore, that order passed will also be equally applicable to the facts of the case. The work order has already been allotted to the third respondent. An argument was submitted on 30.09.2015 that a notice was issued to the petitioner who was called upon to evict the shops within three days, which is unreasonable. Fortunately or unfortunately, the petitioner has taken now 5 months conveniently and successfully dragged on.

7. In view of the above, there is no merit in these writ petitions. Hence, these writ petitions fail and the same are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner,
Kovilpatti Municipality,
Kovilpatti - 628 501.

2. The Revenue Officer,
Kovilpatti Municipality,
Kovilpatti - 628 501.

+ 2 CC TO M/S.SUBBIAH, ADVOCATE IN SR NO. 10221
+ 2 CC TO M/S.M.SARAVANAN, ADVOCATE IN SR NO. 10184

SKN

TE/NGM/ : 01/06/2016 : 4P/7C

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