

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2017

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.SUNDAR

W.P. No.8697 of 2009
and M.P.No.1 of 2009

K.Muniappan,
Proprietor,
Vishnu Malligai Jewellers,
1032, Cross Cut Road,
Gandhipuram,
Coimbatore - 641 012. ... Petitioner

-vs-

1. Commissioner,
Coimbatore Corporation,
Coimbatore - 1.
2. Assistant Commissioner,
North Zone,
Coimbatore Corporation,
Coimbatore - 1.
3. K.T.Somasundaram
4. The State of Tamil Nadu,
rep. by Secretary,
Local Administration and Municipal Affairs,
Fort St. George,
Chennai - 600 009. ... Respondents

(Respondent No.4 impleaded as per order
dated 20.10.2011 in M.P.Nos.2 & 2 of 2009)

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration, declaring that Sec.327(1) of the Coimbatore City Municipal Corporation Act, 1981 (Act 25 of 1981) enabling demolition of buildings and the consequential demolition notice Na.Ka.No.02272/2009/H2/Va dated 17.03.2009 from the second respondent under Section 327 (1) of the Coimbatore City Municipal Corporation Act, are illegal, unconstitutional and void.

For Petitioner : Mr.D.Kulasekaran
For Respondents : Mr.R.Sivakumar &
Mr.C.H.Paranjothi
for respondents 1 & 2

Ms.T.Renuka
for respondent No.3

Mr.T.N.Rajagopalan
Government Pleader (i/c)
for respondent No.4

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

This writ petition has been filed seeking inter alia a declaration that Section 327 (1) of the Coimbatore City Municipal Corporation Act, 1981 enabling demolition of dilapidated buildings, as also a notice of demolition No.Na.Ka.02272/2009/H2/Va, dated 17th March 2009 issued by the Assistant Commissioner, North Zone, Coimbatore Corporation are unconstitutional, illegal and void.

2. In the affidavit of the petitioner in support of the writ petition, it is pleaded that the petitioner has been carrying on jewellery business under the name and style of Vishnu Malligai Jewellers at No.1033, Cross Cut Road, Gandhipuram, Coimbatore-12. The petitioner claims to have been a tenant at the said premises since 1984.

3. According to the petitioner, sometime in 2007, the third respondent purchased the premises. It appears that after the third respondent purchased the premises No.1033, Cross Cut Road, Gandhipuram, Coimbatore-12, disputes and differences arose between the third respondent and the tenants at the said premises, including the petitioner herein. It is, however, submitted by learned counsel appearing on behalf of the third respondent that all the other tenants have vacated the premises and it is the petitioner who has continued to be in occupation.

4. From the materials on record, it appears that the third respondent had filed a petition, being R.C.O.P.No.166 of 2007, under Section 14(1) (b) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 for eviction of the petitioner on the ground that the building had to be demolished.

5. Section 14(1) (b) of the Tamil Nadu Buildings (Lease & Rent Control Act), 1960 (hereinafter referred to as "said Act") provides that when a building is bona fide required by the

landlord for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished, the Controller might, on an application made by the landlord, but subject to the provisions of Sections 12 and 13 of the said Act, pass an order directing the tenant to deliver possession of the building to the landlord before a specified date. However, the order of the Controller under Section 14(1)(b) of the said Act is subject to an undertaking of the landlord to offer to the tenant, area equivalent to the area under his occupation on completion of the repairs and/or re-construction.

6. It may also be pertinent to note the provision of Section 14(4) of the said Act under which a tenant is to be deemed to continue as a tenant of the premises, notwithstanding an order passed by the Controller, even though the tenant is not liable to pay any rent for the period between the date on which he delivers possession of the building to the landlord and the date on which the building is offered to the tenant by the landlord.

7. It is the case of the petitioner that the aforesaid R.C.O.P.No.166 of 2007 was dismissed. Second petition being R.C.O.P.No.64 of 2008 filed by the third respondent for enhancement of rent under Section 4 of the said Act, which provides for fixation of fair rent, was also decided against the third respondent and in favour of the petitioner and the contractual rent was confirmed.

8. However, as observed above, what is challenged in this writ petition is a notice issued under Section 327(1) of the Coimbatore City Municipal Corporation Act, 1981. As observed above, the vires of Section 327(1), that is, the provision under which the impugned notice has been issued, is also under challenge.

9. Section 327 of the Coimbatore City Municipal Corporation Act, 1981, provides as follows:

"327. Precaution in case of dangerous structures. - (1) If any structure be deemed by the Commissioner to be in a ruinous state or dangerous to passers-by or to the occupiers of neighbouring structures, the Commissioner, may, by notice, require the owner or occupier to fence off, take down, secure or repair such structure so as to prevent any danger therefrom.

(2) If immediate action is necessary the Commissioner may himself, before giving such notice or before the period of notice expires fence off, take down, secure or repair such structure or fence off a part of any street or

take such temporary measures as he thinks fit to prevent danger and the cost of doing so shall be recoverable from the owner or occupier in the manner provided in Section 478.

(3) If, in the Commissioner's opinion, the said structure is imminently dangerous to the inmate thereof, the Commissioner shall order the immediate evacuation thereof and any person disobeying may be removed by any police officer."

10. The vires of the provision has been challenged mainly on the ground of discrimination and arbitrariness and consequential violation of Article 14 of the Constitution of India. Admittedly, there is a provision of appeal under Section 452 of the Coimbatore City Municipal Corporation Act, 1981.

11. Arbitrariness is undoubtedly an antithesis to rule of law, equity, fair-play and justice. There cannot, however, be any exact definition of arbitrariness. Nor can there be any straight jacket formula evolved therefor, since the same is dependent on the varying facts and circumstances of each case.

12. Arbitrary action is one that is irrational and not based on sound reason or is unreasonable. Any decision, be it a simple administrative decision or a policy decision, if taken without considering the relevant facts, can be termed as an arbitrary decision and violative of the mandate of Article 14 of the Constitution of India.

13. However, a provision of law which empowers an authority to take harsh action cannot be said to be arbitrary or violative of Article 14 of the Constitution of India. A presumption may be drawn that the statutory authority would not exercise power arbitrarily.

14. Arbitrariness is to be gathered on a wholesome reading of the statute along with the rules, regulations, orders or notifications issued thereunder. Actions uninformed by reason may amount to being arbitrary and liable to be questioned.

15. In this case, the power under Section 327 is not unfettered. It is subject to the subjective satisfaction of the Commissioner that a building is in a dangerous condition of disrepair.

16. Ordinarily, a Government decision, unless shown manifestly arbitrary or wholly unreasonable, cannot be held to be violative of Article 14. As held by the Supreme Court in the State of Bihar v. Bihar Distillery Limited, reported in (19i97) 2 SCC 453 = AIR 1997 SC 1511, an act of legislature cannot be struck down merely by saying it is arbitrary. To be struck

down, a legislative action must be contrary to the Constitution. To be violative of Article 14, it would have to be discriminatory,

17. The classification under Section 327(1) of dilapidated buildings in a ruinous state for issuance of notice of demolition is not discriminatory. The classification has a rational nexus with the object of Section 327(1), which is to prevent loss of life and/or injury by reason of collapse of dilapidated ruinous buildings.

18. The writ petitioner has apparently filed this writ petition challenging the vires of Section 327(1) to avoid the provision of appeal provided under the Coimbatore City Municipal Corporation Act, 1981. Since the Appellate Authority under Coimbatore City Municipal Corporation Act, 1981 is neither a Court nor a Tribunal, but only a quasi-judicial authority, it cannot decide the vires of a provision of statute.

19. It is nobody's case that the legislature lacked legislative competence to enact the Coimbatore City Municipal Corporation Act. Be it noted that almost all municipal corporation statutes all over the country have similar provisions for demolition of dilapidated buildings.

20. By virtue of Section 327, the Commissioner of Corporation is empowered to take action to prevent danger to life and property from structures found to be a threat, as held by this Court in *Mrs.A.Sreedevi v. Commissioner, Corporation of Chennai*, 2004 (1) MLJ 200. The Coimbatore City Municipal Corporation Act was enacted in the year 1981 and has been in force for over three and half decades.

21. The State has a constitutional obligation to protect the lives of its citizens. Ruinous and/or dangerously dilapidated buildings pose a risk to the lives and personal safety of passers-by, apart from the occupants and others who might enter the building. In our view, there is no discrimination in issuing notice for demolition of a dangerously dilapidated building, which poses risk to the lives and safety of the people. It cannot be said that the said provision is arbitrary. There is a provision for notice.

22. Section 327 of the Coimbatore City Municipal Corporation Act, 1981, however, does not prescribe the mode of notice. Notice would necessarily have to be issued to the recorded owner at the recorded address. In addition, there may be any other form of service of notice, including notice by affixation, newspaper publication or such other mode as the notice issuing authority might deem it appropriate. However, such notice need not necessarily be served personally.

23. It is not the case of the writ petitioner that the petitioner has not been served with notice. There is only a vague assertion of violation of principles of natural justice, which is devoid of any particulars. There is not a whisper in the writ petition of how natural justice has been violated in issuing the notice. The petitioner has, as observed above, questioned the vires of the impugned notice.

24. What exactly was the state of the building, how dangerous the building was and whether the building can be allowed to stand are the factual issues, which this Court cannot adjudicate upon affidavits. The petitioner, for reasons best known to himself, did not avail the remedy of appeal before the fact finding appellate authority. The grounds of challenge to the vires of Section 327(1) of the Coimbatore City Municipal Corporation Act, 1981 are frivolous.

25. Equal treatment of unequals violates Article 14 of the Constitution of India, just as unequal treatment of equals violates Article 14 of the Constitution of India. Special provisions for a set of buildings in a ruinous and/or dangerous state does not offend Article 14. Article 14 does not enable a person to continue as a tenant indefinitely in premises which might endanger the lives and personal safety of people.

26. Section 327 of the Coimbatore City Municipal Corporation Act, 1981 does not confer arbitrary powers on the respondent authorities to pick and choose. There is a provision for notice when a building is in ruinous condition. In such ruinous condition, which poses a risk to the lives and personal safety of others, the Assistant Commissioner of the Corporation is bound to take action under the aforesaid Section.

27. It appears that the third respondent made a representation to the Corporation. The Assistant Commissioner inspected the building in question and submitted a report stating that the building is in dilapidated condition. It was only thereafter that the impugned notice was issued to the third respondent, as also the petitioner. In the notice, it is stated that the building is in ruinous condition, which may cause danger to the passers-by or to the occupiers themselves. It is reiterated at the cost of repetition that this Court, exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, cannot inquire into the factual correctness of the finding recorded by the respondent authorities.

The writ petition, therefore, fails and the same is dismissed. Interim order already granted stands vacated. No costs. Consequently, M.P.No.1 of 2009 is closed.

s/d-
Assistant Registrar

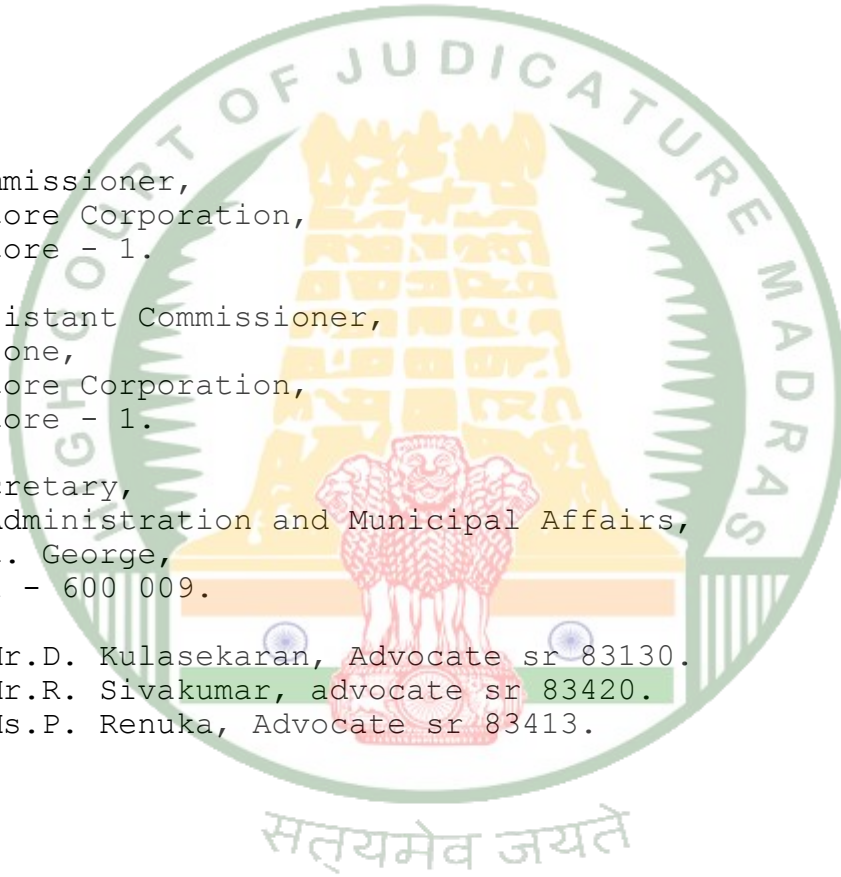
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Sub-Assistant Registrar

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To

1. The Commissioner,
Coimbatore Corporation,
Coimbatore - 1.
 2. The Assistant Commissioner,
North Zone,
Coimbatore Corporation,
Coimbatore - 1.
 3. The Secretary,
Local Administration and Municipal Affairs,
Fort St. George,
Chennai - 600 009.
- +1 CC to Mr.D. Kulasekaran, Advocate sr 83130.
+1 CC to Mr.R. Sivakumar, advocate sr 83420.
+2 Cc to Ms.P. Renuka, Advocate sr 83413.



W.P.No.8697 of 2009

SP(19/12/2017)

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