

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2017

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.27308 of 2015

E.Sumathy

... Petitioner

Vs

1. The Junior Engineer,
Division - 122,
Corporation of Chennai,
Zone - IX,
K.B.Dasan Road, Teynampet,
Chennai - 18.
 2. The Assistant Executive Engineer, Unit-26,
Corporation of Chennai,
Zone - IX,
K.B.Dasan Road, Teynampet,
Chennai - 18.
 3. The Executive Engineer,
Corporation of Chennai,
Zone - IX,
K.B.Dasan Road, Teynampet,
Chennai - 18.
 4. The Superintending Engineer,
Corporation of Chennai,
Central Region, 2nd East Cross Street,
Pulla Avenue, Shenoy Nagar,
Chennai - 600 030.
 5. The Regional Deputy Commissioner,
Corporation of Chennai,
Central Region, 2nd East Cross Street,
Pulla Avenue, Shenoy Nagar,
Chennai - 30.
 6. The Member Secretary,
CMDA, No.1, Gandhi Irwin Road,
Emore, Chennai - 8.
- (R6 is suo-motu impleaded as per order dt.26.10.15
by NKKJ in W.P.No.27308/15)

7. D.V.Solomon
8. Gnanamani Ganesan
9. R.Senniyappan
- 10.Faheemullah Ismail-UL-Shakila
- 11.Emma Samuel
- 12.Mohideen Zayeed

(R7 to R12 are impleaded as per order dt.26.11.15

by TSSJ in M.P.No.2/15 in W.P.No.27308/15) ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents 1 to 5 to proceed further in pursuance of their notice dated 07.01.2015 bearing No.U-26/C.No.U1/002/2014 issued under Section 258 of the Chennai City Municipal Corporation Act.

For petitioner : Mr.T.Mohan
for M/s.S.Anbazhagan

For R1 to R5 : Mr.P.V.Selvakumar

For R6 : Mr.K.Rajashrinivas

For R7 : Mr.V.Govardhanan

For R8 & R10 : Mr.H.Nazirudeen

For R9 : Mr.R.Senniappan (party-in-person)

For R11 : Mr.K.V.Babu

For R12 : Mr.A.J.Khajamohideen

O R D E R

By way of filing this writ petition, the petitioner seeks a direction to the respondents 1 to 5 to proceed further in pursuance of their notice dated 07.01.2015 issued under Section 258 of the Chennai City Municipal Corporation Act (in short "the Act").

2. Learned counsel appearing for the petitioner submitted that the notice dated 07.01.2015 issued under Section 258 of the Act by the respondents 1 to 5 has called upon the petitioner to fence off, take down, secure or repair the building in question as it is in dilapidated condition within a period of 7 days from the date of the said notice. Thereafter, on receipt of such notice, she has requested her daughter, who is running boutique shop, to vacate the premise and subsequently, by vacating the premise, when she was about to commence her work in compliance of the Corporation notice dated 07.01.2015, the Inspector of Police, E3, Teynampet Police Station, Chennai, issued a notice dated 20.01.2015 directing her to stop the compliance work. Therefore, the petitioner sent a notice dated 21.01.2015 to the respondents 1 to 5 / Corporation

of Chennai and in addition thereto, she has also made an application under the Right to Information Act seeking certain information. However, despite such steps, the respondent Corporation did not give any reply, which, ultimately, made her to file a writ petition in W.P.No.2604 of 2015 seeking to quash the notice dated 20.01.2015 issued by the Inspector of Police, Teynampet Police Station, Chennai, directing the petitioner not to demolish the building and this Court, by order dated 17.02.2015, disposed of the said writ petition making it clear that the said Inspector of Police is not entitled to interfere with the matter by directing the petitioners to approach the Corporation of Chennai and obtain a permission and demolish the construction. In the said order, it was also made further clear that it was open to the Corporation of Chennai to pass appropriate orders on merits.

3. While the matter stood as above, one Prof.D.V.Solomon / 7th respondent herein has filed a writ petition in W.P.No.10089 of 2015 seeking to quash the demolition notice dated 07.01.2015 issued by the Corporation of Chennai. This Court, by order dated 09.04.2015, dismissed the said writ petition granting liberty to the Corporation of Chennai to proceed further in accordance with the impugned notice dated 07.01.2015 in accordance with law, by observing that the Corporation of Chennai has rightly issued the demolition notice dated 07.01.2015 taking into consideration of the dilapidated condition of the building.

4. Aggrieved by the above said order of the learned Single Judge, when Writ Appeal was filed in W.A.753 of 2015 by the said Prof.D.V.Solomon, the Hon'ble Division Bench of this Court, by order dated 16.06.2015, disposed of the said writ appeal by directing the Corporation of Chennai to afford an opportunity of hearing to the appellant-Prof.D.V.Solomon / 7th respondent herein and then to take a consequential decision on consideration of his representation in accordance with law. But, it is stated, despite the orders of the Hon'ble Division Bench, the said Prof.D.V.Solomon was not heard and no decision is taken till date.

5. In the meanwhile, it is submitted, five owners and two other occupants have agreed to accept the demolition notice dated 07.01.2015 and to that effect, they have also conducted a meeting and it was unanimously agreed in the minutes of the meeting held on 25.10.2015 that the building was in dilapidated condition, hence, the same has to be demolished and then to be rebuilt. Thus, in view of the said minutes of the meeting, the prayer of the petitioner seeking a direction to the Corporation of Chennai to proceed further in accordance with the notice dated 07.01.2015 deserves to be allowed.

6. Heard the learned counsel for the petitioner and the learned counsel appearing for all the respondents.

7. It is not in dispute that the notice dated 07.01.2015 issued by the Corporation of Chennai calling upon the petitioner to fence off, take down, secure or repair the building in question was put to challenge by one Prof.D.V.Solomon/7th respondent herein, who is also one of the aggrieved persons and also running a coaching center in the said premise. In view of the said notice, he had left the said premise during the middle of the academic year. This Court, having considered the rival submissions of both parties and also taking into account the dilapidated condition of the building, by order dated 09.04.2015 passed in W.P.No.10089 of 2015, upheld the said notice dated 07.01.2015 granting liberty to the Chennai Corporation to proceed further in accordance with the said notice and in accordance with law, by making it clear that the Chennai Corporation has rightly issued a notice dated 07.01.2015 under Section 258 of the Act by taking into consideration the dilapidated condition of the building.

8. Aggrieved by the above said order of the learned Single Judge, the said Prof.D.V.Solomon / 7th respondent herein has filed a Writ Appeal in W.A.No.753 of 2015, taking inter-alia a stand that the building in question was not in a dilapidated condition and that the said notice was issued at the instance of the intervenor, who have no locus-standi to seek eviction. After considering the rival submissions, the Hon'ble Division Bench of this Court, by order dated 16.06.2015, disposed of the said writ appeal directing the Chennai Corporation to afford an opportunity of hearing to the said Prof.D.V.Solomon/7th respondent herein within a period of three days by taking note of the fact that the said building in question is in pernicious condition and it was further made clear that the authority concerned was at liberty to take consequential decision on consideration of his representation in accordance with law.

9. Therefore, when a specific question was posed to the learned counsel appearing for the Chennai Corporation as to whether the said Prof.D.V.Solomon / 7th respondent herein was afforded an opportunity of hearing, he was unable to give his reply nor it is stated in the counter affidavit filed by the Chennai Corporation to that effect. Learned counsel for the 7th respondent herein stated that after the order passed by the Hon'ble Division Bench directing the Chennai Corporation to afford an opportunity of hearing to him, though he has sent a representation dated 02.11.2015 to the Chennai Corporation, he did not receive any reply from them.

10. Now, all the five owners and two other occupants of the building in question have reached consensus to demolish the building in question in a meeting held on 25.10.2015. A relevant portion of the minutes of meeting held on 25.10.2015 is reproduced hereunder:-

"We saw the RCC frame structure was of an extremely poor condition. In many apartments the balconies were also in dilapidated condition. Plaster was falling off and reinforcement was exposed. As regards columns, less said the better, with the structural frame having failed.

All the owners barring the owners of apartment 3 and 7 were present. Even apartment 3 owner was represented by his brother, the present occupier and apartment 7 was represented by his uncle, an advocate. There was no access to apartment No.7.

There was unanimous opinion that the building was in dilapidated condition and has to be rebuilt. There is no doubt in our mind that the 34 year building is not fit for occupation any more and poses a hazard to the residents and no amount of repairs can remedy the situation....."

From the above, it is clear that all the flat owners have unanimously agreed to demolish the building in question as it was in a dangerous condition. Therefore, in view of such unanimous decision taken by the flat owners of the building, this Court finds no impediment to direct the respondents 1 to 5 to proceed further in accordance with the notice dated 07.01.2015. It is at this point of time, learned counsel for the Chennai Corporation stated that on receiving the application from the flat owners of the said building in question for demolition, they will proceed further. I do not agree with the said submission, for, if no such application is given by the owners of the dangerous building, then no steps could be taken to demolish the building. Moreover, no owner of the building would come forward to demolish the building, therefore, it is clarified that even if no such application is received from the flat owners of the building in question, in the larger public interest, the Chennai Corporation is directed to proceed further as per the notice dated 07.01.2015 in terms of Sections 258 r/w 380 and 387 of the Act as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

11. Though the learned counsel for the respondents 9 and 11 sought for six months more time, this Court, by taking into consideration of the dilapidated condition of the building in question, is not inclined to grant any such time as sought for by them, since the demolition notice itself was issued in the year 2015 i.e. on 07.01.2015, and this apart, when the meeting was held on 25.10.2015, they have requested to hold the demolition of the building till June, 2016, and even this period was also expired seven months ago. Thus, I do not find any merit on their request seeking further time to vacate the said premise in question, when the building itself is admittedly in dangerous condition as stated above.

12. Therefore, for the reasons stated above, the writ petition is allowed as prayed for. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rkm

To

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6. The Member Secretary,
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+1cc to Mr.K.V.Babu, Advocate, S.R.No.9083
+1cc to Mr.H.Nazirudeen, Advocate, S.R.No.8802
+2cc's to Mr.S.Anbazhagan, Advocate, S.R.Nos.8973 & 8754
+1cc to Mr.V.Govardhanan, Advocate, S.R.No.8974
+1cc to Mr.P.V.Selvakumar, Advocate, S.R.No.8645
+1cc to Mr.K.Rajashrinivas, Advocate, S.R.No.8463
+1cc to Mr.R.Senniappan, Advocate, S.R.No.8719

W.P.No.27308 of 2015

KGK(CO)
CA(15/02/2017)



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