



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Orders Reserved On : 10.10.2017

Orders Pronounced On: 25.10.2017

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CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL
and
THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD) No.18425 of 2017
and
WMP (MD) No.14860 of 2017

M/s.Gajapria Hotels Pvt. Ltd.,
Rep. by its Managing Director Ganesan
S/o.Marappa Gounder,
5 & 6 royal road, Cantonment.
Trichy-01.

.. Petitioner

Vs.

1.The Commissioner,
Tiruchirappalli City Corporation,
Tiruchirappalli-01.

2.R.K.Ramanathan,
S/o.Ramasamy Udayar,
No.15, 3rd street,
Arulananda Nagar, Thanjavur.

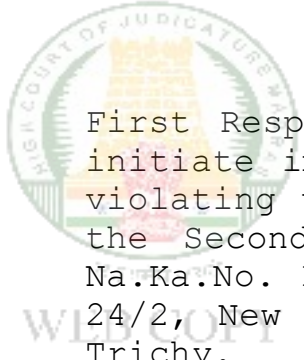
.. Respondents

Prayer: Writ Petition is filed Under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus directing the 1st Respondent to initiate immediate legal action against the 2nd Respondent for violating the conditions and to withdraw the permission permitting the 2nd Respondent to demolish the building in proceedings N.K.No. F1/3895/2017/Ko/AB, dated 16.06.2017 in T.S.Nos.23/2 and 24/2, New Ward K, New Block 17, Door Nos. 2 & 3, Royal Road, Trichirappalli.

For Petitioner : Mr.A.Saravanan
For R1 : Mr.N.S.Karthikeyan
Standing Counsel
For R2 : Mr.R.Murali

O R D E R

[Order of the Court was made by **M.VENUGOPAL, J.**]



First Respondent/Commissioner, Trichirappalli City Corporation to initiate immediate legal action against the Second Respondent for violating the conditions and to withdraw the permission granted to the Second Respondent, to demolish the building in proceedings Na.Ka.No. F1/3895/2017/Ko/AB, dated 16.06.2017 in T.S.Nos.23/2 and 24/2, New Ward K, New Block 17, Door Nos. 2 & 3, Royal Road, Trichy.

Facts and Petitioner's Pleas:

2. According to the Petitioner, the adjacent building at the East in Survey Nos.23/2 and 24/2, New Ward K, New Block 17, Door Nos. 2 & 3, Royal Road, Trichy, was purchased by one K.M.Ramasamy Udayar and his wife Mrs.Kasiammal. The aforesaid building is in possession of the Second Respondent, who had planned construction of a building on the aforesaid Survey numbers without obtaining plan approval and also permission to construct the building. Therefore, the Trichirappalli Corporation Authorities had stalled the same. Apart from that, the Corporation Assistant Commissioner, K-Abishegapuram, Trichirappalli-1, had issued a communication, dated 04.05.2002 to immediately stop the construction, since there was a violation of the orders of the Corporation Authorities in regard to the construction of the building.

3. As regards the Writ Petition No.41449 of 2002, on the file of this Court, was filed and an interim order granted was made absolute, on 27.08.2003. In fact, in W.P.No.41449 of 2002, the Second Respondent and others were parties to the Writ proceedings and a representation made that an application for regularisation was submitted before the First Respondent and the same have to be considered. Viewed in that perspective, this Court was pleased to dispose of the said Writ Petition by issuing directions to the First Respondent to consider the proposal for regularisation and to pass appropriate orders on merits and in accordance with Law within a period of three months from the date of receipt of copy of the order. Also, it was made clear in the said order that there shall be no further construction during the pendency of the consideration of the application for regularisation.

4. At this stage, the Learned counsel for the Petitioner brings it to the notice of this Court that the Second Respondent had submitted an application before the First Respondent on 17.04.2017 seeking permission for demolition of the building put up by him and that the permission was granted on 16.06.2017 subject to the conditions specified therein.

5. In this connection, the Learned counsel for the Petitioner points out that when the permission for demolition was granted, certain conditions were imposed to the effect that Information Boards on four sides should be put up in regard to the demolition, erection of Iron Barricades and the safety of adjacent building and passersby should be ensured and the 'debris' should



be removed then and there. Further, 90 days period was stipulated for completing the demolition process and non completion within the period of 90 days would entail automatic cancellation of permission of demolition granted earlier.

6.The Learned counsel for the Petitioner proceeds to point out that the Second Respondent should carry out the demolition work after intimating the Executive Engineer and Assistant Commissioner of the First Respondent/Corporation before 48 hours and under their supervision with the prior permission of Police Department. However, the grievance of the Petitioner is that the Second Respondent had started the work of demolition in a haphazard manner without following any Rules and norms and not caring for the safety of adjoining buildings and passerby, thereby posing a serious threat to the occupants of the area. Therefore, the Petitioner made a representation before the First Respondent, dated 28.06.2017 and to the Commissioner of Police, Trichirappalli and also that neighbours had lodged similar complaints before the First Respondent and to the Police. Under these circumstances, the demolition process was stopped for a while.

7.The Learned counsel for the Petitioner submits that the Second Respondent had started the demolition operation again for the past two days using compressors without following any safety norms and because of the demolition process, the buildings on either side of the building under demolition, began shaking and the cars parked in the Hotel buildings were also likely to be damaged, besides damages that may be caused to human lives.

8.The Learned counsel for the Petitioner takes a categorical plea that because of the vibration while demolishing the building by the use of High Power compressor, the occupants of the Petitioner's Hotel as well as the Hotels situated Eastern side of the building and the customers came out of the building fearing as if there was an earth quake. Further more, because of the demolition process only, the said vibration had occurred and there was an altercation between the employees of the Hotel and the persons who were employed in demolition. Besides this, on 07.09.2017, the owner of the City Tower visited the office of the First Respondent and made complaints and owing to the non availability of the Executive Engineer, he was directed to meet one Balasubramanian, who is an officer of the Corporation, Ko-Abishegapuram and he had also submitted a complaint. However, no action has been taken.

9.The Learned counsel for the Petitioner adverts to a fact that the Petitioner filed W.P.(MD)No.17555 of 2017 seeking a prayer of Mandamus directing the First Respondent to ensure that the demolition operation of the building in T.S.Nos.23/2 and 24/2, New Ward K, New Block 17, Door Nos. 2 & 3, Royal Road, Trichy, is to be carried out in a safe manner employing Scientific method



and strict adherence to the conditions imposed in the order, dated 16.06.2017, of the Second Respondent etc. This Court, on 18.09.2017, in the Writ Petition had directed the Respondents therein to consider and dispose of the representation submitted by the Petitioner on 11.07.2017 on merits and in accordance with Law, after issuing notice to the Second Respondent etc. But the Petitioner has opted to expedite the work by demolishing the building using compressor and other machineries. Indeed, the Second Respondent for the demolition work, was using compressor in JCP machine and the said machine was extended to the 6th floor.

10.The Learned counsel for the Petitioner submits that the Petitioner gave a representation to the Commissioner on 27.09.2017, another representation on 28.09.2017 in person, a representation on 30.09.2017 to the First Respondent and other persons, in person, mail and post. Also, he addressed a mail to the First Respondent and others on 30.09.2017. But the grievance of the Petitioner is that neither the First Respondent nor his subordinate had taken any action against the unauthorised construction. Hence, he has filed the present Writ Petition following among other grounds that the First Respondent should ensure that demolition process of the building in T.S.Nos.23/2 and 24/2, New Ward K, New Block 17, Door Nos. 2 & 3, Royal Road, Trichy, is carried out in a safe manner without causing any damage to the adjoining building and in strict compliance of the conditions imposed in the communication dated 16.06.2017 of the First Respondent.

11.The clear cut position of the Petitioner is that the First Respondent must ensure that no compressor is engaged for the demolition process and employing compressor for demolition work would result in causing damage to the life and property in the adjoining buildings and also post a serious threat to the passerby.

First Respondent's Contentions:

12.In response, the Learned Standing Counsel for the First Respondent/Corporation submits that the Second Respondent had put up unauthorized construction in T.S.No.23/2 and 24/2, New Ward "K", New Block 17, Door No.2 & 3, Royal Road, Trichy and hence the Assistant Commissioner, Ko.Abishegapuram Zone, Trichy Corporation had issued stop work notice in C.No.F1/1980/99 dated 14.05.2002. Later, the Second Respondent filed Writ Petition in W.P.No.41449 of 2002 before this Court against the unauthorized construction and obtained an interim order and the same was made absolute by this Court, on 27.08.2003. In this regard, the Learned Standing Counsel for the First Respondent contends that the Second Respondent during pendency of W.P.No.41449 of 2002, projected an application for regularization of unauthorized construction put up in question and ultimately, the said Writ Petition was disposed of on 21.11.2014 with a direction to the First Respondent to dispose the application submitted by the Second



Respondent for regularization of unauthorized construction in accordance with Law, within a period of three months.

13.The Learned Standing Counsel for the First Respondent points out that the First Respondent/Trichirappalli City Corporation, sent a proposal to the Local Planning Authority, Trichirappalli, on 18.09.2015, pursuant to the order passed by this Court in W.P.No.41449 of 2002, dated 21.11.2014 and the same was rejected by the Local Planning Authority on 09.01.2017. Resting upon the same, the First Respondent had also rejected and returned the application of the Second Respondent for regularization of building on 18.01.2017, which was despatched to the Second Respondent, on 20.01.2017.

14.Expatiating his contention, the Learned Standing Counsel for the First Respondent adds that the Second Respondent has put up Ground + 4 Floors without approval in T.S.No.23/2 and 24/2, New Ward "K", New Block 17, Door No.2 & 3, Royal Road, Trichy and that the Second Respondent submitted an application before the Assistant Commissioner, Ko.Abishegapuram Zone, Trichy Corporation on 17.04.2017, seeking permission for demolition of the building in the premises in question and on receipt of application, the Assistant Commissioner, Abishegapuram Zone, Trichy Corporation had granted permission to the Second Respondent for demolition of the building as per proceedings, dated 16.06.2017 imposing 12 conditions. The 90 days demolition period was determined as 16.06.2017 to 16.09.2017.

15.The Learned Standing Counsel for the First Respondent informs this Court that the Second Respondent had violated the condition Nos.1, 2, 7, 11 & 12 and hence, a show cause notice, dated 13.07.2017, was issued by the Assistant Commissioner, Ko.Abishegapuram Zone, for cancellation of permission granted for demolition of the building. The Second Respondent after receipt of show cause notice, sent his explanation on 21.07.2017, stating that he had rectified all violations noticed by the Assistant Commissioner, which was received on 24.07.2017.

16.The Learned Standing Counsel for the First Respondent submits that the Second Respondent on 31.08.2017 submitted an extension application for further period of 4 months for demolition of the building, before the Assistant Commissioner, Ko.Abishegapuram Zone and on 19.09.2017, the Second Respondent made another application for extension before the Assistant Commissioner, Ko.Abishegapuram Zone seeking 6 months time for demolition of the building in question and that the Second Respondent gave an undertaking to complete the demolition work within a period of six months. Accordingly, the Assistant Commissioner had granted six months further period from 16.09.2017



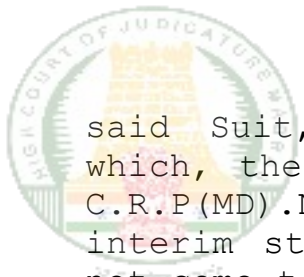
to 15.03.2018 as per proceedings, dated 16.09.2017, in terms of the Bye-Laws of the First Respondent/Corporation.

17.The Learned Standing Counsel for the First Respondent contends that pursuant to the order, dated 18.09.2015 in W.P.(MD). No.17555 of 2017, the First Respondent had issued notice to the Second Respondent on 03.10.2017 through registered post, requiring him to stop the work immediately and to offer his explanation and that the Second Respondent, on receipt of notice, stopped the demolition work on 06.10.2017. Moreover, as per the inspection made by the First Respondent officials along with Technical Assistant, it transpires that the Second Respondent had completed demolition work in 5th floor and totally 7 persons were doing demolition works from 9.45 a.m., to 5.45 p.m., daily with full safety equipments. Apart from that, the Second Respondent's contractor H.M.Sadiq Rishve had taken Insurance for his employees Compensation and the Policy is for 9 months from 21.07.2017 to 20.09.2017 and the second insurance policy for 9 employees, in all is from 26.09.2017 to 25.12.2017.

18.The Learned Standing Counsel for the First Respondent submits that the Second Respondent had erected iron barricades in front side (Southern Side), Royal Main Road and Western side of the Petitioner's Hotel. Further, on the Eastern side and Northern side, there is no sufficient space for erecting iron barricades and hence, the Eastern side and Northern side, were closed by the Second Respondent with Green Cloths. Also, the Second Respondent has put up the notice board regarding demolition of building in all sides.

19.The Learned Standing Counsel for the First Respondent points out that the owner of City Tower Mr.Mohammed Kani, who made a representation before the First Respondent on 18.09.2017 in regard to the demolition work carried out by the Second Respondent and when the officials of the First Respondent contacted him, he informed that the Second Respondent had fully closed with Green cloths on his side and further, there is no hindrance to him. Moreover, after demolition, the waste materials were sent to the under Ground floor through the big holes and same was removed then and there.

20.The Learned Standing Counsel for the First Respondent contends that the Writ Petitioner filed a Civil Suit in O.S.No.551 of 1999 on the file of the District Munsif Court, Tiruchirappalli seeking the relief of permanent injunction against the Second Respondent and others in regard to Old T.S.Nos.23 and 24, Ward K, Block 17, Cantonment, Trichy to an extent of 2' X 179' and in the



said Suit, the Petitioner secured an ex-party order, against which, the Second Respondent preferred Civil Revision Petition in C.R.P(MD).No.1356 of 2016 before this Court and obtained an interim stay. In short, it is projected that the Petitioner has not come to Court with clean hands.

21.The Learned Standing Counsel for the First Respondent adds that the First Respondent had issued a notice to the Second Respondent pursuant to the order passed by this Court in W.P(MD). No.17555 of 2017, dated 18.09.2015 and after receipt of notice, the Second Respondent had stopped the entire demolition work on 06.10.2017. In this regard, it is the plea of the First Respondent that it will take necessary action as per Law against the Second Respondent, after obtaining an explanation from him.

Second Respondent's Submissions:

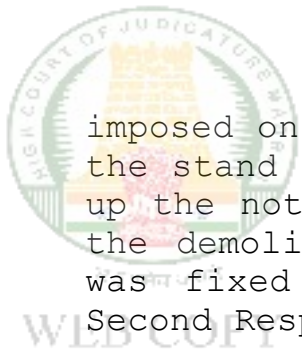
22.Conversely, it is the contention of the Second Respondent that the Second Respondent made a proper application and obtained necessary permission from the First Respondent on 16.06.2017 and in reality, the said permission was granted after obtaining opinion of an Expert. Also that, the Second Respondent is strictly obeying all the conditions without any violation and indeed, a proper notice board was affixed for the public as regards the demolition of building and by taking due care to the adjacent building owners, the act of demolition is proceeded with.

23.The Learned counsel for the Second Respondent submits that the Second Respondent filed an application seeking extension of time before the First Respondent to demolish the building and the First Respondent on 21.09.2017 had extended the time for another six months till 15.03.2018 and presently, the demolition is in half way and the Writ Petitioner is exaggerating the normal issues only to create trouble to the Second Respondent.

24.The Learned counsel for the Second Respondent brings it to the notice of this Court that the Second Respondent on receipt of the First Respondent's proceedings, dated 03.10.2017, had submitted his explanation and submitted a reply in person and through courier also. According to the Second Respondent, he had not violated any of the conditions prescribed for demolition and except the Petitioner, no one gave any complaint as if the demolition is affecting them.

Petitioner's Reply:

25.By means of Reply, the Learned counsel for the Petitioner contends that the Second Respondent had not fixed any iron sheets on the Eastern, Northern and Southern side of the building and recently, fixed 8 sheets upto the height of 15 feet from the ground and not covered all the sides of the entire building with Green Cloth, which is the violation of Condition No.2 of the Order



imposed on 16.06.2017 by the First Respondent. Besides this, it is the stand of the Petitioner that the Second Respondent had not put up the notice board on all sides of the building informing about the demolition till 06.10.2017 and after that, the notice board was fixed on the Southern and Western sides and thereby, the Second Respondent had violated the condition No.1.

26.The Learned counsel for the Petitioner submits that a minimum of 10 loads of waste materials are stored in the ground floor on 08.10.2017 and thereby the Second Respondent had violated the Condition No.5 of the order, dated 16.06.2017.

27.The Learned counsel for the Petitioner strenuously takes a plea that from the date of initiation of demolition work, till 08.10.2017, the Second Respondent had never provided any safeguard materials to the Employees and not taken any Life Insurance Policies in favour of the Employees and hence, the Condition No.6 of the First Respondent's order, dated 16.06.2017 was violated.

28.The Learned counsel for the Petitioner contends that the Petitioner on enquiry, came to know that the Second Respondent had neither informed about the demolition work with the A.E.E. and A.E. nor obtained any permission from the Police Department and thereby violated the condition Nos.11 and 12.

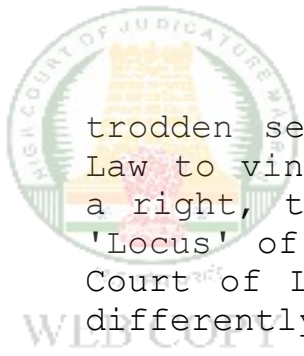
29.The Learned counsel for the Petitioner submits that due to the inaction of the First Respondent, who has a responsibility and duty to supervise the demolition work, has made the Second Respondent to violate the conditions imposed in the order dated 16.06.2017 of the First Respondent.

30.The Learned counsel for the Petitioner points out that a 'Hitachi Machine' is working on the fifth floor of the building till 09.10.2017 and the same is making huge noise and disturbance to the public and to the Petitioner's building. Further, due to the demolition of the Second Respondent's building in the fifth floor through Hitachi Machine, the Petitioner's building is getting disturbed and getting crack. Therefore, the demolition of the Second Respondent building through any machine, Compressor is to be stopped.

Discussions:

31.At the outset, this Court significantly points out that in Law, 'Justice' is rudimentally one of 'Fairness' and 'Equity'. Undoubtedly, 'Access to Justice' is in our Constitutional Scheme of things. When human beings live in 'Society', their rights are to be recognized, preserved and protected.

32.It is to be borne in mind that a 'Public Interest Litigation' can be filed by an Homo-sapien with a view to secure the rights of members of the public at Large or any weaker/down



trodden sections of Society, who have not approached a Court of Law to vindicate their rights. However, if there is a negation of a right, then, a 'Court of Law' can intervene notwithstanding the 'Locus' of the concerned person. It cannot be brushed aside that a Court of Law cannot traverse beyond the ambit of Law. To put it differently, it must act and perform its duty, within its bounds.

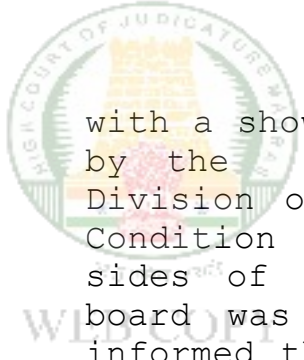
33. Insofar as the present case is concerned, though the petitioner in his writ petition affidavit has averred that he has filed the instant writ petition, on his behalf and on behalf of the residents and occupants of the Royal Road, Cantonment area, Trichirappalli, it is latently and patently evident that the petitioner, earlier had laid a Civil Suit in O.S.No.551 of 1999 on the file of the Learned District Munsif, Trichirappalli, seeking for the relief of permanent injunction against the Second Respondent and others in respect of Old T.S.Nos.23/2 and 24/2, Ward-AB, Block No.17, at Royal Road, Trichirappalli, wherein the petitioner had obtained an 'Exparte Order', against which, the Second Respondent filed C.R.P.(MD)No.1356 of 2016 before this Court and obtained an interim stay against the petitioner. Therefore, the present writ petition filed by the petitioner as 'Public Interest Litigation' in Stricto Sense of the term is not a 'Public Interest Litigation' and it is only a private dispute between the parties, in the considered opinion of this Court. Further, since the petitioner in the present writ petition complains of violation of the conditions imposed by the First Respondent, through its proceedings, dated 16.06.2017 in Law, a Court of Law can intervene, in the considered opinion of this Court.

34. At this juncture, it is relevantly pointed out that the application of K.M.Ramasamy and Kasiammal seeking exemption from Rules for the construction of buildings without permission, was rejected by means of Resolution No.5 of the EC meeting of the First Respondent/Corporation held on 27.11.2015 and therefore, the file without sanction was returned, which fact was intimated to the Second Respondent. As a matter of fact, the Second Respondent submitted an application for demolition of the building, dated 17.04.2017, addressed to the Assistant Commissioner, Ko-Abishegapuram Division, Trichirappalli City Corporation and the First Respondent on 16.06.2017, granted permission for demolition of the building to and in favour of the Second Respondent.

35. A careful scrutiny of the proceedings dated 16.06.2017 of the Assistant Commissioner of Ko-Abishegapuram of the First Respondent/Corporation, indicates that for demolishing the old building in Ward-AB, Block No.17, T.S.Nos.23/2 and 24/2 at Royal Road, the permission was granted subject to 12 conditions

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36. It comes to be known that the Second Respondent was issued

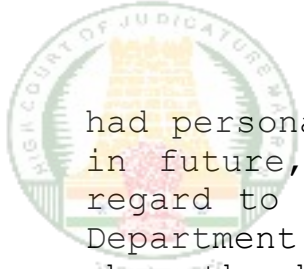


with a show cause notice dated 13.07.2017 (but sent on 19.07.2017) by the Assistant Commissioner (Engineer) of Ko-Abishegapuram Division of the First Respondent/Corporation stating that as per Condition No.1 (imposed vide letter dated 16.06.2017), on four sides of the building, for demolition of the building, notice board was not placed. Further, as per Condition No.2, it was informed that on four sides iron barricades were to be installed, but on one side alone, the iron barricades were installed.

37. Moreover, as per Condition No.7, prior to the demolition of the building and after demolition of the building, the real position was to be photographed and video to be taken (in the form of CD), which were directed to be handed over at the office of the First Respondent/Corporation. But the same were not handed over as on date. That apart, the Condition No.11 (imposed vide proceedings dated 16.06.2017) of the Assistant Commissioner (Engineer) of Ko-Abishegapuram Division to the effect that prior to the commencement of the act of demolishing the building, the date and time details were to be informed to the Corporation's Assistant Executive Engineer (Mechanical) and Assistant Commissioner (Engineer), Kirapatti Section. However, the building, without notice, was being demolished. Besides these, the Second Respondent was also informed that Condition No.12 imposed to the effect that with a prior permission of the Police Department, the aforesaid acts were to be carried out, but it was not to be known whether for demolishing the building, prior permission of the Corporation was obtained.

38. In fact, the Assistant Commissioner (Engineer) of Ko-Abishegapuram of the First Respondent/Corporation had mentioned the aforesaid violation of the conditions to the Second Respondent by means of notice, dated 13.07.2017 (but sent on 19.07.2017) and the Second Respondent was directed to offer his explanation letter within 24 hours as to why the permission granted to demolish the building in question was not to be cancelled and further, the Second Respondent was advised to commence the act of demolition within the conditions imposed.

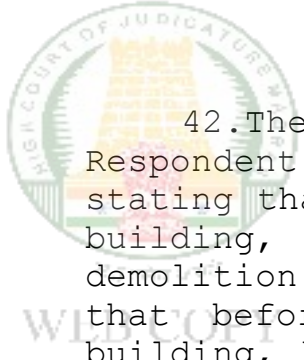
39. The Second Respondent through his letter dated 21.07.2017, addressed to the Assistant Commissioner of the First Respondent/Corporation, had stated that on four sides of the building, the notice board was kept as per condition No.1, for which, he had enclosed a photo. As regards the Condition No.2, he had stated that he had properly acted and in regard to the Condition No.7, he was under the impression that the photo and the CD will have to be given finally and further, in the Condition imposed, it was not mentioned that the photo and CD were to be given immediately and that he had now enclosed the same and went in future he would hand over the same. In so far as the Condition No.11 is concerned, the Second Respondent had stated that it was reported that Assistant Commissioner of Kirappatti



had personally inspected when the building was demolished and that in future, he had stated that he would carefully inform and in regard to Condition No.12, a petition was given before the Police Department and that the Second Respondent was informed that only when the building was demolished at a big level by the use of machine, money would have to be paid to the Police Department and now, the same was not required and when the building was demolished with machine, the same will have to be informed and he was also informed and for security purpose, the Police Constable should be sent from the Police Department.

40.It appears that the Second Respondent had taken a New India Assurance Company Limited Policy for employees compensation Insurance and the period of Insurance is from 21.07.2017, 1:31:50 p.m. to 20.09.2017, 11:59:59 p.m., which relates to 9 members of daily wages category. The cash total wages is mentioned as Rs.1,44,000/-. The trade description is mentioned as 'Building Demolition' and particular of works is mentioned as 'Building Demolition', from 26.09.2017 04:24:15 p.m. to 25.12.2017, 11:59:59 p.m., the period of insurance is taken by the Second Respondent in respect of building demolition work pertaining to Nine employees and the sub category is mentioned as 'Excl. blasting and tunneling'. The cash total wages is mentioned as Rs.2,16,000/-.

41.It is seen from the notice of the Assistant Commissioner (Engineer) of Ko-Abishegapuram of the First Respondent/Corporation, dated 31.10.2017, whereby and whereunder the Second Respondent was informed that the time for demolition work was extended subject to certain conditions as per proceedings of the First Respondent/Corporation dated 16.06.2017 and the extension was for the period from 16.09.2017 to 15.03.2018; but the act of demolition work of the building was carried out without following the conditions. Further, the Second Respondent was also informed that only in front portion of the building alone, a notice board was kept, whereas before starting the demolition of the building on four sides, the notice of demolition board must be kept for the view of the public. Apart from that, the Second Respondent had put up barricades only on three sides of the building, but not on four sides, where the iron barricades were directed to be placed by the Second Respondent. Moreover, the Second Respondent, for demolition of the building, was using 'Hitachi Machine' and also that for the employees/workers, who are engaged in the act of demolition of the building were not provided with security gadgets. In short, by the notice, dated 31.10.2017 of the First Respondent, the Second Respondent was required to stop the demolition work immediately and also to offer his explanation within 48 hours, failing which, the proceedings issued ~~Services de mto qvint / is mices~~ of the building would be cancelled without issuance of any prior notice.



42.The Second Respondent for the notice of the First Respondent dated 03.10.2017 had issued a reply dated 07.10.2017 stating that before demolishing the building, on four sides of the building, notice board for public view in regard to the act of demolition is placed. Further, the Second Respondent had stated that before demolishing the building, on four sides of the building, barricades were put up. Also that the Second Respondent had mentioned in his reply dated 07.10.2017 to the effect that in the place, where his building is situated, on four sides, there is no place for the public to gather and that mini Hitachi machine (low weightage one) for demolishing the concrete, is used for demolishing the building and the employees were given enough security gadgets and the work is in progress.

43.In the instant case, even though the First Respondent/Trichirappalli City Corporation had granted permission to the Second Respondent, for demolition of the building, as per proceedings, dated 16.06.2017, whereby and whereunder, nearly 12 conditions were imposed and for the show cause notice dated 19.07.2017 issued by the Assistant Commissioner, Ko-Abishegapuram Zone of the First Respondent/Corporation, addressed to the Second Respondent, in regard to the violations mentioned therein, the Second Respondent had submitted his explanation dated 21.07.2017, stating that he had rectified all violations noticed by the Assistant Commissioner of the First Respondent/Corporation.

44.Although, the Second Respondent on 31.08.2017, projected an extension application for further period of four months for demolition of the building in question before the Assistant Commissioner, Ko-Abishegapuram Zone of the First Respondent/Corporation, on 19.09.2017, the Second Respondent, had filed another application seeking extension before the Assistant Commissioner, Ko-Abishegapuram Zone of the First Respondent/Corporation, seeking six months time for demolition of the building and also, the Second Respondent gave an undertaking to complete the demolition work within the period of six months. Based on the undertaking given by the Second Respondent, the Assistant Commissioner, Ko-Abishegapuram Zone of the First Respondent/Corporation, had granted six months further extension period from 16.09.2017 to 15.03.2018 as per proceedings dated 16.09.2017, as per Bye-Laws of the Trichirappalli City Municipal Corporation.

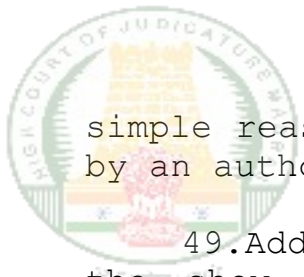
45.The principal grievance of the petitioner is that from the day one of commencing the demolition work, the Second Respondent has not followed any of the conditions imposed by the First Respondent through its proceedings dated 16.06.2017. It is represented on behalf of the petitioner that the Second Respondent's contractor alone took the Insurance Policy as per the condition No.6 and inasmuch as the major conditions imposed by the First Respondent were not adhered to by the Second Respondent.



46. The stand of the petitioner is that customers' car parking place of the petitioner's hotel premises, were damaged and three glass windows were damaged and although the petitioner has submitted representations to the First Respondent to safeguard his interest and property, but the First Respondent had not taken any steps as against the Second Respondent. It is made clear by this Court that if the Petitioner's version in this regard is found to be correct (based on the representations made by him to the First Respondent), then, it is for the First Respondent to take immediate and diligent speedy action, as per Law.

47. It is to be pointed out that the Commissioner of the First Respondent/Corporation has power to issue notice to the Second Respondent ordering to remove the 'Rubbish and Filth', which accumulates/had accumulated in large quantities on the premises. If the Second Respondent fails to take necessary steps to remove the 'Rubbish and Filth' on the premises in question, then, it is open to the First Respondent/Commissioner of Corporation, to remove the same and to recover the expenses incurred thereto from the Second Respondent.

48. On a careful consideration of respective contentions and this Court, taking note of the fact that the Second Respondent had submitted his explanation to the Assistant Commissioner, Ko-Abishegapuram Zone of the First Respondent/Corporation, on 21.07.2017, for the show cause notice, dated 13.07.2017 (mentioning that he had rectified all the violations noticed by the Assistant Commissioner, Ko-Abishegapuram Zone of the First Respondent/Corporation), bearing in mind the notice dated 03.10.2017 issued by the First Respondent to the Second Respondent, for which, the Second Respondent has submitted a reply on 07.10.2017 and also considering the overall assessment of the facts and circumstances of the present case, in an integral manner, at this stage, in the interest of Justice, Equity, Fair play, Good conscience and even as a matter of prudence, directs the First Respondent to look into the reply of the Second Respondent, dated 07.10.2017 with all earnestness and seriousness (for the show cause notice dated 03.10.2017) and to pass a speaking orders on merits in a Just, fair, free, open, impartial manner with an unbiased mind and that too, in a dispassionate manner, of course after providing necessary opportunities to the petitioner, the Second Respondent and others concerned, by following the Principles of Natural Justice in the subject matter in issue. The First Respondent shall pass necessary orders in respect of the show cause notice dated 03.10.2017 issued by it, after taking into consideration of the reply of the Second Respondent, dated 07.10.2017 and if it finds any violations, made by the Second Respondent, in respect of any of the 12 conditions imposed, through its proceedings dated 16.06.2017 etc., it can pass appropriate orders, because of the



simple reason that a person, who breaches the condition(s) imposed by an authority, cannot go scot-free.

49. Added further, before passing final orders, in regard to the show cause notice, dated 03.10.2017, issued by the First Respondent/Corporation, the responsible officers of the First Respondent/Corporation are directed to visit the spot daily and carry out inspection(s) along with 'Technical Assistants' and take photos, apart from taking videos in regard to the demolition work being carried on by the Second Respondent with the aid of his Contractor (because of the fact that by means of the proceedings of the First Respondent dated 21.09.2017, the time for demolition of the building in question was granted to the Second Respondent till 15.03.2018) and submit the same to the Commissioner of the Corporation. If any violation(s) is/are noticed by the First Respondent, against the Second Respondent, in regard to the carrying out of the demolition work, it can sternly deal with the Second Respondent, of course in the manner known to Law and in accordance with Law. It cannot be gain said that if the First Respondent is not satisfied with the act of the Second Respondent, in carrying out the demolition work strictly according to the conditions imposed, then, it is open to the First Respondent to pass necessary further orders against the Second Respondent (including the stoppage of demolition work). If the Second Respondent employs the 'Hitachi Machine', for demolishing the building in question and if the same is impermissible in Law, then, liberty is granted to the First Respondent to proceed against the Second Respondent strictly in accordance with Law. The First Respondent shall also take into consideration of the reply of the Second Respondent dated 07.10.2017 wherein at Serial No.3, he had mentioned that the mini Hitachi Machine with low weight is used for breaking the concrete and ascertain whether such use of mini Hitachi machine is permissible in respect of the building demolition work in question. In the teeth of petitioner's Chartered Engineer's Certificate/Report, dated 06.10.2017, wherein it was mentioned that he inspected the existing old Hotel building 'Gajapriya Hotels (P) Ltd., bearing door Nos.5 and 6, T.S.No.23 Pt (Old TS.NO.144 Pt), WArD-AB (Old Ward-K), Block No.17, Royal Road, Cantonment, Trichy and opined as under:-

"It is certified that if the demolition by Hitachi high powered machine shall be endanger to the existing adjacent old hotel buildings due to large vibrations. There is no sufficient safety distance (1.50 times of height of the building) to fall the debris safely. The impact of the demolish by using Hitachi high power machineries, the large size debris and structural elements tends to fail on the adjacent buildings. Hence, demolish may be made by using Top Down - Manual methods by providing adequate safety measures like Steel Scaffolding, Steel Catch Platform, Steel Catch fan,



Suitable Screens & Nets. Saw cutting method may be employed for cutting concrete slabs and beams to reduce vibrations."

50. It is made quite clear by this Court that at the time of passing final orders in respect of the show cause notice, dated 03.10.2017 issued by the First Respondent, through its Assistant Commissioner, Ko-Abishegapuram Zone of the First Respondent/Corporation, after considering the reply of the Second Respondent, dated 07.10.2017 and the certificate of the Chartered Engineer dated 06.10.2017, it may issue necessary directions to the Second Respondent (if need be/if situation so warrants), as to whether the Second Respondent is to take necessary steps to demolish the building in question through its Contractor by providing adequate safety measures like Steel Scaffolding, Steel Catch Platform, Steel Catch fan, Suitable Screens & Nets and the employment of Saw cutting method for cutting concrete slabs and beams to reduce vibrations.

51. Besides these, it is open to the First Respondent to impose any other condition(s) upon the Second Respondent for carrying out the demolition work of the building in question, keeping in mind with the conditions and directions issued earlier.

52. That apart, if the First Respondent, through its responsible officers, who have made the spot inspection/visit of the building in question, comes to a consequent conclusion that the Second Respondent has not followed its earlier directions/any conditions imposed and violated the conditions with impunity and continues to breach the conditions one way or other, then, it is open to the First Respondent/Corporation to take necessary Civil action, imposing of fine, if any or Criminal action and to carry out the demolition work in question through 'Police Aid' (of course, after adhering to the safety measures) and to recover the expenses incurred thereto from the Second Respondent. However, if the Second Respondent is to carry out the demolition of the building in question, an Indemnity bond/solemnly sworn undertaking Affidavit can be obtained in furtherance of substantial cause of justice, stipulating necessary conditions thereto.

53. With the aforesaid observation(s) and direction(s), the writ petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar



To:
The Commissioner,
Tiruchirappalli City Corporation,
Tiruchirappalli-01.

+1cc to Mr.K.GOVINDARAJAN, Advocate, SR.83469
+1cc to Mr.A.SARAVANAN, Advocate, SR.83547
+1cc to Mr.N.S.KARTHIKEYAN, Advocate, SR.83546

W.P. (MD) No.18425 of 2017
and
WMP (MD) No.14860 of 2017
25.10.2017

RJ2
KK/SV MMS/SAR 3/25.10.2017/ 16P- 5C/