



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2017

CORAM:

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**THE HONOURABLE MR.JUSTICE M.VENUGOPAL  
AND  
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

W.P.(MD)No.20139 of 2017

Thirupathi Dhanaraja : Petitioner  
.vs.

1.The Municipal Commissioner,  
Nagercoil Municipality,  
Balamore Road,  
Nagercoil - 629 001,  
Kanyakumari District.

2.S.Rajamony  
3.R.K.Mony : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Mandamus directing the 1<sup>st</sup> Respondent to permit the petitioner to vacate the premises of the demised building by opening the sealed building for one week and grant such other reliefs and in the nature and circumstances of the case and in the interest of justice, equity and good conscience.

For Petitioner : Mr.V.A.Dhana Aravindha Balaji for  
M/s.Dhana Law Associates  
For R-1 : Mr.P.Adhimoola Pandian

O R D E R  
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[Order of the Court was made by M.VENUGOPAL, J.]

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in directing the 1<sup>st</sup> Respondent to permit the petitioner to vacate the premises of the demised building by opening the sealed building for one week and grant such other reliefs and in the nature and circumstances of the case.

2. Heard the Learned Counsel for the Petitioner and the Learned Standing Counsel for the First Respondent/Nagercoil Municipality.

3. To void an avoidable delay, issuance of notice to Respondent Nos. 2 and 3, is dispensed with by this Court.



4. On earlier occasion, the third Respondent as Writ Petitioner projected W.P(MD)No. 6789 of 2014, seeking for issuance of direction to the First Respondent/Municipal Commissioner, Nagercoil Municipality, to take steps for demolishing/removal of illegal construction put up by the second Respondent S.Rajamony in Door No.2, South Car Street, in S.No.D5/75, Nagercoil Municipality.

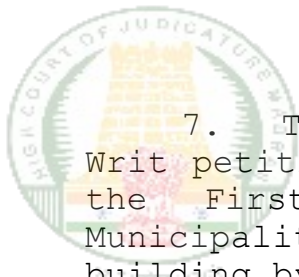
5. As a matter of fact, this Court on 27.07.2017 passed orders in the aforesaid W.P(MD)No.6789 of 2014, wherein at Paragraph No.5 had observed the following and ultimately, disposed of the Writ Petition by issuing necessary directions.

*"5.We are not inclined to straightaway issue such a direction. It is stated that the second respondent had submitted a plan for regularising the construction put up by him. Unless the said application submitted by the second respondent is negatived, the first respondent may not be justified in proceeding to demolish the construction at this stage. If the first respondent demolishes the construction, immediately the application submitted by the second respondent would become infructuous. But, at the same time, the second respondent cannot indefinitely prolong the issue as he has been all along. The first respondent can wait for a reasonable period so as to enable the second respondent to get an interim relief or a final order of approval from the Appellate Authority/Competent Authority. If the second respondent is unable to obtain final order of regularisation or interim relief from the appropriate authority within six months from the date of receipt of this order, it is open to the first respondent to proceed further in the manner known to law. At present, the building remains under lock and seal."*

6. Thereafter, it comes to be known that the tenant of R.K.Mony, the Petitioner in the present Writ Petition, as Petitioner had filed W.P(MD)No.18132 of 2017 before this Court and the Learned Single Judge on 22.09.2017 dismissed the Writ Petition and at paragraph Nos.3 and 4 of the order, had observed the following:

*"3.This Court is of the view that this writ petition itself is not maintainable, since the Hon'ble Division Bench of this Court, in W.P(MD)No.6789 of 2014 had already passed final orders in this matter on 17.07.2017, to keep the building in question under lock and seal."*

*4.Hence, this Court is not inclined to entertain this petition and the same is dismissed accordingly, leaving it open to the petitioner to approach the Division Bench for any grievances."*



7. Thereafter, the tenant has preferred the present Writ petition (MD)No.20139 of 2017 seeking issuance of direction to the First Respondent/The Municipal Commissioner, Nagercoil Municipality, to permit him to vacate the premises of the demised building by opening the sealed building for one week.

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8. In this connection, it is not out of place for this Court to make a pertinent mention that in the order passed in W.P(MD)No.6789 of 2014, at Paragraph No.2, the Second Respondent therein S.Rajamony had given an undertaking, which runs as under:

*"2.I humbly submit that as on today the building in dispute is without any valid approval plan and in such circumstances, without prejudice to the merits of the case, I hereby undertake to remove the articles and movables from Door No.2, South Car Street, S.No.D5/75, Nagercoil, Nagercoil Municipality within 23.07.2017 (Sunday) and arrange the building suitable for lock and seal process by the 1<sup>st</sup> Respondent herein."*

9. Also, it is to be noted that in the present Writ Petition (MD)No.20139 of 2017, filed by the tenant viz., Thirupathi Dhanaraja as Petitioner, the First Respondent/Municipal commissioner, Nagercoil Municipality, Kanyakumari District, at paragraph No.3 of the counter affidavit had mentioned the following:

*"3.Regarding the averments in paras 3 and 4 of the affidavit are denied as false and incorrect. The 2<sup>nd</sup> respondent put up a construction without building plan permission. The 3<sup>rd</sup> respondent filed a writ petition in W.P(MD)No.6789 of 2014 the writ petition came up for hearing on 17.07.2016, the Honourable Division Bench passed order directing the Municipality to lock and seal premises in question and also directed the 2<sup>nd</sup> respondent herein (owner of the property) to file affidavit within one week to assure take all the articles belonging stored in the building in question. In pursuant to the direction issued by this Honourable Court, the 2<sup>nd</sup> respondent herein filed affidavit on 18.07.2017. After that the 1<sup>st</sup> respondent Municipality granted time for one week to taken out the articles to all the occupants in the building. The 1<sup>st</sup> respondent municipality inspect the premises on 24.07.2017, on inspection the Municipal authorities found that all the articles were taken out by the petitioner as well as the other occupants in the premises. Thereafter, the 1<sup>st</sup> respondent Municipality sealed the premises on 24.07.2017. It is further submitted that the averments made in the writ petition in para 3 of the affidavit is false. The petitioner himself taken out all the articles. Therefore, there are no materials or articles inside the premises."*



10. The closest scrutiny of the averments made at Paragraph No.3 of the counter-affidavit filed by the Municipal Commissioner/Nagercoil Municipality in the present Writ Petition(MD) No.20139 of 2017, latently and patently indicates that the Municipality had inspected the premises on 24.07.2017 and on inspection, the Municipal Authorities found that all the articles were taken out by the Petitioner/Tenant as well as the other occupants in the premises. Thereafter only, the Municipality had sealed the premises on 24.07.2017.

11. That apart, it is averred on behalf of the Municipality that the Petitioner/tenant himself had taken out all the articles and as such, there are no materials or articles inside the premises.

12. Recording the aforesaid facts, this Court dismisses the present Writ Petition as nothing survives for any adjudication by this Court. No Costs.

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Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

The Municipal Commissioner,  
Nagercoil Municipality,  
Balamore Road,  
Nagercoil - 629 001,  
Kanyakumari District.

pm

RL/2C/4P/KK/SAR1/27/11/2017

ORDER MADE IN

W.P. (MD) No.20139 of 2017

14.11.2017