

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2018

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.30165 of 2017
and
W.M.P.No.32780 of 2017

K.Murugesan

...Petitioner

Vs.

1.The Commissioner,
Chennai Corporation,
Rippon Building,
Chennai -3.

2.Regional Deputy Commissioner - South,
Chennai Corporation,
Zonal Office,
No.13, Unit -39, Division 180,
Adayar, Chennai - 20.

3.Syed Sultan

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records pertaining to the impugned order issued by the 2nd respondent in notice No.05/180/2017, dated 10.11.2017 served on 14.11.2017 is illegal and to quash the same.

For Petitioner : Mr.G.Ranganathan

For Respondents : Mr.T.C.Gopalakrishnan
Standing Counsel for R1 and R2
Mr.K.Venkataramani,
Senior Counsel for
Mr.A.Saravanan

O R D E R

The petitioner has come forward with the present writ petition to quash the impugned order issued by the second respondent in notice No.05/180/2017, dated 10.11.2017.

2. Heard Mr.G.Ranganathan, learned counsel for the petitioner, Mr.T.C.Gopalakrishnan, learned Standing Counsel appearing for the respondents 1 and 2 and Mr.K.Venkataramani, learned Senior Counsel appearing for the third respondent.

3. The petitioner is the lessee in respect of the building measuring to an extent of 250 sq.ft., bearing door No.119/7, Lattice Bridge Road, Thiruvannamiyur, Chennai. The third respondent is the land lord / owner of the building. The petitioner challenges the order of the Chennai Corporation dated 10.11.2017 issued under Section 258 of Chennai city Municipal Corporation Act, 1919.

4. The case of the petitioner is that the building is in a good condition, but, on the instigation of the third respondent, the impugned order came to be passed on 10.11.2017.

5. The learned counsel for the petitioner submitted that the impugned order refers to the inspection conducted by the Zonal Officer dated 18.9.2017. But, even before the said alleged inspection, the third respondent issued with a notice dated 03.05.2017, stating that the Corporation has already passed an order of demolition, directing the tenants to vacate the premises. According to the learned counsel for the petitioner, this would prove the collusion between the respondents.

6. Per contra, the learned Standing counsel appearing for the respondents 1 and 2 submitted that a demolition permission was granted to the third respondent on 03.5.2017 and the notice dated 05.7.2017 was issued based on the permission granted on 03.5.2017. The learned Standing counsel further submitted that the petitioner has not produced any proof to establish the case of collusion between the respondents.

7. The learned Senior counsel appearing for the third respondent submitted that on 18.9.2017, a team consisting of Zonal Officer, Zone -XIII, Assistant Executive Engineer, Unit-39, Assistant Engineer, Division - 180, Unit-39, Zone-XIII, Greater Chennai Corporation have inspected the building and they found many cracks vertically and horizontally in the building in dispute and after verifying the stability certificate issued by Mr.Kannan, Structural Engineer, the order was passed. It is further submitted that the experts have found that the building is in a dilapidated condition and prayed to dismiss the writ petition.

8. Perusal of the typed set of papers filed by the third respondent would reveal that the Assistant Executive Engineer, Adayar Division on 03.05.2017 granted permission to the third

respondent for demolition of the building in question. Thereafter, the third respondent had issued a notice dated 05.7.2017, requesting the petitioner to vacate the premises within a period of one month. Even though the third respondent has not mentioned about the permission given by the Assistant Executive Engineer, dated 03.5.2017, it is evident that based on the demolition permission, the third respondent issued a notice. Therefore, the contention of the petitioner that even before conducting the inspection, the third respondent has issued a notice in collusion with the official respondent cannot be countenanced. Further photo graphs annexed in the typed set of papers would show that the building is in a dilapidated condition.

9. Report of the inspection dated 18.9.2017, is extracted below :

"1. For the above said building Demolition approval issued by Greater Chennai Corporation vide WDCNo.DA/WDCN13/00127/2017, dt: 03.05.2017.

2.The age of the building may be about 45 years.

3. So many vertical and horizontal cracks have been developed in the above said building.

4.There are about 20 shops in the above said building.

5.The above said building got Instability Certificate issued by Thiru.Kannan, M.E., (Structural) dated 07.08.2017.

6.It is learnt from the applicant, since the tenants / shop owned or refused to vacate the building he could not proceed further.

7.The owner of the applicant sent an instability certificate for the said building issued by structural Engineer.

8.The dilapidated building photographs are enclosed herewith."

10. In similar circumstances, this Court passed an order in W.P.No.31638/2017, dated 03.01.2018, after considering Section 258 of Chennai City Municipal Corporation Act, which is extracted here under:

" 10. A Plain reading of the provision makes it clear that the Commissioner has a legal obligation to initiate action in case the building is in dangerous condition. A perusal of the report of the Engineer and photographs produced by the

petitioner and the fourth respondent reveal that the building in dispute is in a dilapidated condition. Further admittedly, the petitioner is a tenant and he is bound by the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act and unless he satisfies the conditions contained in Section 22(1) of the Act, no permission can be granted to him to carry out the repairs. Hence, I do not find any force in the contentions learned counsel for the petitioner."

11. Taking note of the above facts, I find no merit in this writ petition. Hence, this writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

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To

1.The Commissioner,
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2.Regional Deputy Commissioner - South,
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W.P.No.30165 of 2017
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LRS(CO)
GN(19/04/2018)

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