

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:04.09.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE P.D.AUDIKESAVALU

Contempt Petition No.1830 of 2017 and
W.P.Nos.17407 & 17408 of 2018 and
W.M.P.Nos.20692 & 20639 of 2018

Contempt Petition:

R.Hassan Ali Akbar .. Petitioner

Vs.

1.Mr.Nanthagopal, I.A.S.,
The District Collector,
Sathuvachari, Vellore.

2.Mr.Manivannan,
The Commissioner,
Arcot Municipality,
Arcot, Vellore.

... Respondents

Prayer: Petition filed under Section 11 of the Contempt of Courts Act, 1971, praying to punish the respondents for contempt of Court for having violated deliberately and wantonly the order of this Court dated 15.02.2016 in W.P.No.5484 of 2016.

For Petitioner : Mr.N.A.Nissar Ahamed

For Respondents : Mr.J.Pothiraj

Special Government Pleader

W.P.Nos.17407 & 17408 of 2018:

K.Thirumurugan .. Petitioner in WP.17407/2018
 D.Malar .. Petitioner in WP.17408/2018
 Vs.

1.The District Collector,
 Sathuvachari, Vellore.

2.The Revenue Divisional Officer,
 Ranipet Sub Division,
 Ranipet, Vellore District.

3.The Tahsildar,
 Arcot, Vellore District.

4.The Commissioner,
 Arcot Municipality
 Arcot, Vellore District.

5.R.Hassan Ali Akbar ..Respondents in both WPs

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, forbearing the official respondents or anybody on their behalf from initiating any coercive action of demolition, without due process of law, with regard to the constructions put in the property situated at Door Nos.41, 41-A, Anna Salai, Arcot, Vellore District comprised in Survey No.29,30/1,2 part, T.S.No.30 part, Block No.4, Ward No.C respectively.

For Petitioner in : Mr.N.L.Rajah
 W.P.No.17407/2018 Senior Counsel
 For Mr.K.Balu

For Petitioner in : Mr.Mohanamurali
 W.P.No.17408/2018 For Mrs.S.Hemalatha

For Respondents 1 to 4 : Mr.J.Pothiraj
 Special Government Pleader
 For 5th Respondent : Mr.N.A.Nissar Ahamed

COMMON O R D E R

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

Heard the Learned Counsel for the Petitioners and the Learned Counsel for the Respondents.

2. According to the Contempt Petitioner, the property bearing Door Nos.41 & 42, Anna Salai, Arcot belongs to the Late Arcot Mohammed Khader Wakf Estate. One Ravi is the tenant in respect of Shop No.41, Anna Salai, Arcot and D.Malar is the tenant in respect of Shop No.42, Anna Salai, Arcot. Furthermore, the said Ravi had illegally sublet Shop No.41, Anna Salai, Arcot to Thirumurugan. They had illegally constructed the commercial building in the Wakf property without the permission of the Mutawalli, Wakf Board and the Respondents.

3. It is represented on behalf of the Petitioner that from the information given by the Respondents, it came to light that no permission was obtained under the Municipalities Act and therefore, the construction is illegal. When the Petitioner represented the matter before the Respondents to take necessary action and to remove the illegal construction, based on their representation dated 03.09.2005, no action was taken and therefore, the

Petitioner filed W.P.No.5484 of 2016 seeking for passing of an order in directing the Respondents 1 to 3 to initiate action against the Respondents 4 to 6 by demolition of unauthorised construction as per Section 216 of the Tamil Nadu District Municipalities Act.

4.This Court, on 15.02.2016 in W.P.No.5484 of 2016 at paragraphs 3 to 5, had observed the following:

"3.Mr.V.Lakshminarayanan, learned counsel for the third respondent submits that no permission has been granted by the Wakf Board for any construction on the specified site.

4.Learned Special Government Pleader appearing for respondents 1 and 2 submits that on inspection of the site and after affording an opportunity of hearing to the concerned parties, appropriate action will be taken within a period of six weeks in accordance with law and on its own merits.

5.In view of the above submission made by the learned Special Government Pleader, it is ordered accordingly."

and disposed of the Writ Petition.

5.Further, the Petitioner had submitted the order copy of the Writ Petition for compliance and that a notice of hearing was issued by the Commissioner, Arcot Municipality on 04.04.2016 and that the Petitioner had appeared and submitted all the records and made submissions. Since no

orders were passed, the Petitioner issued a Legal Notice dated 18.07.2016 and later filed the present Contempt Petition to punish the Respondents.

6. According to the Learned Special Government Pleader, the 2nd Respondent/Commissioner, Arcot Municipality, Arcot, Vellore issued a notice dated 06.03.2018 to Thirumurugan (Petitioner in W.P.No.17407/2018) and Malar (Petitioner in W.P.No.17408/2018) under Sections 216(1)(2), 313 and 317 of the Tamil Nadu District Municipalities Act, 1920 directing them to demolish the unauthorised structure. The said notice was received by both of them. In short, the Respondents had proceeded against the persons, who had put up illegal construction at Door No.41 and 42 of Anna Salai, Arcot.

7. The Learned Special Government Pleader brings it to the notice of this Court that the Tahsildar, Arcot had addressed a communication to the District Collector on 08.07.2018 inter alia stating that all the doors in Door No.41 was sealed on 08.07.2018 at about 11.15 and 11.40 hours and that the articles inside the building at Door No.41 were removed and also, a sum of Rs.9950/- was seized and kept in the cash box of the shop. Further, the iron

locker found near the cash box in the aforestated shop was also sealed. Likewise, the Petty shop and Hotel/Restaurants owners in Door No.42, voluntarily came forward and removed the articles and the ground floor and first floor in Door No.42 was sealed in front of the Revenue Divisional Officer.

8.Also, the Learned Special Government Pleader draws the attention of this Court that the Revenue Divisional Officer, Ranipet had addressed a communication dated 08.07.2018 to the District Collector, Vellore inter alia stating that in regard to the demolition and removal of shops bearing Door Nos.41 and 42, after obtaining advise and report from the Experts, without affecting the interest of other buildings and general public, action can be taken in this regard. Further, the District Collector, Vellore had addressed a communication dated 09.07.2018 to the Commissioner, Arcot Municipality, Arcot stating that a compliance report, about the present status regarding the removal of encroachment based on the details furnished by the Revenue Divisional Officer, was directed to be filed and informed to his office.

9. At this stage, Thirumurugan and Malar had filed W.P.Nos.17407 and 17408 of 2018 before this Court as Petitioners praying for passing of an order by this Court in restraining the official respondents from initiating any coercive action of demolition, without due process of law, in regard to the constructions put up in the property situated at Door Nos.41, 41-A, Anna Salai, Arcot, Vellore District comprised in Survey No.29,30/1,2 part and T.S.No.30 part, Block No.4, Ward No.C respectively.

10. This Court, on 12.07.2018 in W.P.Nos.17407 and 17408 of 2018, had passed the following order:

"Considering the status of the articles of petitioners having been thrown out after sealing their shops, it is appropriate to direct the official respondents to open the shops, which were in occupation of the respective petitioners and store the thrown out articles in the said shops. Thereafter, the shops shall be locked and the keys shall be kept by the officials respondents."

and further directed to post the said Writ Petitions before the Hon'ble Division Bench, who passed the earlier order, after obtaining necessary orders from the Hon'ble Chief Justice

11.It is to be pointed out that on behalf of the Petitioner in W.P.No.17407/2018 (who figured as R5 in W.P.No.5484/2016, filed by the Contempt Petitioner, as Petitioner), a Civil Suit in O.S.No.29/2016 was filed before the Learned District Munsif-cum-Judicial Magistrate, Arcot, as Plaintiff against one Taherunissa Begam and Asan Ali Akbar (Contempt Petitioner) seeking the relief of permanent injunction restraining the defendants, their men, agents and servants from in anyway interfering with his possession and enjoyment of the suit property and ultimately, the trial Court passed a Judgment on 21.11.2017 granted the relief of permanent injunction restraining the 2nd Defendant from interfering with the Plaintiff's possession and enjoyment till he is evicted by due process of Law. Also, in regard to the suit in O.S.No.23 of 2018 filed by the Petitioner in W.P.No.17408 of 2018 (who figured as R6 in W.P.No.5484/2016, filed by the Contempt Petitioner as Petitioner) before the District Munsif-cum-Judicial Magistrate, Arcot, as Plaintiff seeking the relief of permanent injunction restraining the Commissioner, Arcot Municipality, Arcot from in any way interfering with her peaceful possession and enjoyment of the property and the said suit is pending.

12. In the instant case on hand, the Petitioners [R5 and R6 in W.P.No.5484 of 2016] were issued with a notice dated 06.03.2018 by the 2nd Respondent/Commissioner, Arcot Municipality, Arcot, Vellore [4th Respondent in the Writ Petitions] under Sections 216(1)(2), 313 and 317 of the Tamil Nadu District Municipalities Act, 1920. It is not the case of the Petitioners that the buildings which were occupied by them had sanctioned plans for construction from the Competent Authority. It may also be recalled here that the Learned Counsel for the Wakf Board (3rd Respondent in W.P.No. 5484/2016) had submitted before this Court, as seen from the order dated 15.02.2016, that no permission has been granted by the Wakf Board for any construction on the specified site. Further, a charge sheet was filed before the Judicial Magistrate-cum-Munsif, Arcot on 10.04.2018 against the Writ Petitioners (viz., K.Thirumurugan and D.Malar) and they were directed to appear before the Learned District Munsif-cum-Judicial Magistrate, Arcot on 27.04.2018 at 10.30 a.m. in respect of the unauthorised constructions. Therefore, by no stretch of imagination, it can be said that action against them was initiated without following due process of Law. This would necessarily mean that the relief as sought in the Writ Petitions does not arise for consideration.

13.It is informed by the Learned Counsel for the 4th Respondent/Municipality that the articles belonging to the Petitioner in W.P.No.17407/2018 which were removed from the shop occupied by him are now in the custody of the 4th Respondent/Municipality, which can be collected by him.

14.Today, when the matters were taken up for hearing, the Petitioner in W.P.No.17407/2018 has made the following endorsement:

"It is submitted that we will collect the vessels from the 4th Respondent's place within one week without prejudice to my any other legal right".

15.Recording the aforesaid fact and the endorsement so made, the Petitioner in W.P.No.17407/2018 (R5 in W.P.No.5484/ 2016) shall collect his belongings/vessels/articles etc. from the 4th Respondent/Municipality within a period of one week from the date of receipt of copy of this order. Likewise, in respect of the Petitioner in W.P.No.17408/2018, if any vessels/articles belonging to her is in the custody of the 4th Respondent/Municipality, then, it is open to her to collect the same from the 4th Respondent/ Municipality.

16. In view of the foregoing, the Respondents 1 and 2 [in Contempt Petition No.1830 of 2017] are directed to take necessary follow up action, pursuant to the order passed by this Court in W.P.No.5484 of 2016 dated 15.02.2016, in true letter and spirit. Resultantly, the Contempt Petition and the Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

SD/-

ASSISTANT REGISTRAR (COMM. CASES)

SGL

//Certified to be true copy//

Dated at Madras this the day of 2018.

COURT OFFICER (O.S.)

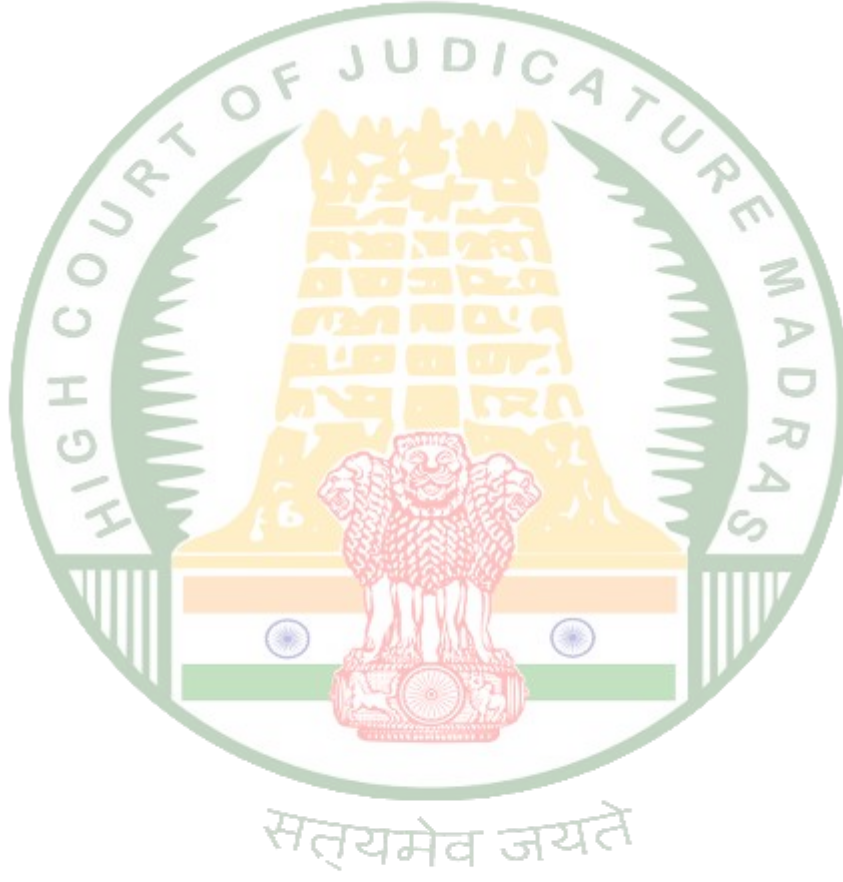
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CO/18/09/2018

To

1. The District Collector,
Sathuvachari, Vellore.
2. The Commissioner,
Arcot Municipality,
Arcot, Vellore.
3. The Revenue Divisional Officer,
Ranipet Sub Division,
Ranipet, Vellore District.
4. The Tahsildar,
Arcot, Vellore District.

5.The Government Advocate,
High Court, Madrs.



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