

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 22.01.2018

Pronounced on: 23.01.2018

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.31380 of 2017
& WMP 34491 of 2017

M/s.Anupam Enterprises,
Rep. by its Partner,
Shanthimul Nahar

...Petitioner

Versus

1. The Commissioner,
Greater Chennai Corporation,
Rippon Building, Chennai 600 003.
2. The Assistant Commissioner,
Zone IX, Corporation of Chennai,
Lake View Road, Nungambakkam, Chennai 600 034.
3. Mrs.Athika Ifthikar ... Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of mandamus to direct the respondents 1 and 2 to forthwith pass orders forbearing the 3rd respondent, her men, agents, servants, subordinates, legal heirs, or anybody acting under her or in trust from in any manner proceeding with demolition or any other related activities in respect of the premises bearing Door No.749-A, Ground floor, Anna Salai, Chennai 600 006, until such time, the petitioner is evicted from the ground floor of the above premises by due process of law.

For Petitioner : Mr.Ashok Menon
For RR1 & 2 : Mr.T.C.Gopalakrishnan
For R3 : Mr.K.V.Sundararajan

O R D E R

The prayer in the writ petition is for issuance of a Writ of Mandamus to direct the respondents 1 and 2 to forthwith forbear the 3rd respondent, their men and agents from in any manner proceeding with the demolition or any other related activities in respect of the premises bearing Door No.749A, Ground Floor,

Annasalai, Chennai, until and unless the petitioner is evicted by following due process of law.

2. The case of the petitioner is that the petitioner-Firm is a tenant under the 3rd respondent in respect of the entire ground floor portion in Door No.749A, Ground Floor, Annasalai, Chennai and the petitioner is paying monthly rent of Rs.45,000/-. The 3rd respondent filed an eviction petition in RCOP.No.950 of 2016 against the petitioner on the ground of willful default and for demolition and re-construction. In the eviction proceedings, trial commenced on 10.07.2017 and when the eviction petition was posted for cross-examination of PW1, due to his absence, the eviction petition was dismissed for default on 04.10.2017.

3.The petitioner would allege that there are 3 other buildings connected together and after dismissal of the RCOP, the building bearing Door Nos.749, 750 and 751 have been demolished and the 3rd respondent started demolishing the others portions in Door No.749A.

4. The grievance of the petitioner is that if the first floor in Door No.749A is demolished, straightaway, the entire superstructure in the building will be collapsed. Hence, the petitioner sent a representation to the 2nd respondent on 15.11.2017 and also made a police complaint. Since no action was taken, the petitioner has come forward with the present writ petition.

5. In the counter affidavit of the 3rd respondent, it is stated that the petitioner is a tenant under her in respect of the building in Door No.749A and the building consists of ground plus 3 floors and the age of the building is about 50 years and the condition is not good. Further, while implementing the Metro Rail Project, the Chennai Metro Rail had dug tunnel near the building and a station for the Metro Rail is also coming under-ground close to the property. These activities have greatly damaged the building, and it has become weak and therefore the building is in a very dilapidated condition.

6. It is further stated in the counter affidavit that all the tenants in respect of the adjacent buildings, have already been evicted and the demolition work of the buildings have also been completed. The tenants, viz., M/s. Paramount and M/s.Core Company, who have occupied the 1st and 2nd floors of the premises have already vacated. Despite informing these informations to the petitioner through various letters, the petitioner is still occupying the building, which is not only posing threat to the petitioner's employees and occupants, but also causing loss and hardship to the 3rd respondent.

7. The 3rd respondent has further stated that in the month of May 2014, due to fall of sunshade, one Mrs.Mahalakshmi has sustained injury and a police complaint was also lodged, following which, compensation was paid. The petitioner was offered compensation to vacate the premises, but to enrich themselves, at the cost of the 3rd respondent, they are wantonly withholding the property in spite of the fact that the reason is genuine and bonafide. It is also alleged that the petitioner is still in arrears of rent to the tune of Rs.1,85,250/-.

8. Heard Mr.Ashok Menon, learned counsel for the petitioner, Mr.T.C.Gopalakrishnan, learned Standing Counsel for the respondents 1 and 2 and Mr.K.V.Sundararajan, learned counsel for the 3 respondent and perused all the records.

9. In the case on hand, it is not in dispute that the petitioner is a tenant under the 3rd respondent in respect of the property bearing Door No.749A. Though it is contended by the 3rd respondent that the petitioner will have to pay arrears of rent of Rs.1,82,250/-, the learned counsel for the petitioner, by referring to the receipts enclosed in the typed set of papers, submitted that there are no arrears of rent.

10. According to the petitioner, as per Section 246A of the Chennai City Municipal Corporation Act, until the petitioner is evicted from the ground floor, the owner should not be permitted to demolish the entire building.

11. Perusal of the records would reveal that the total extent of land, in which the building in question and other adjacent buildings were put up, has an extent of 50 grounds in the heart of the city. The specific case of the 3rd respondent is that the building is 50 year old and due to implementation of Metro Rail Project, the strength of the building is weakened and it is in a dilapidated condition. Indisputably, the tenants in the adjacent buildings bearing Door Nos.749, 750 and 751 have vacated and the buildings have been demolished and a joint venture agreement has been entered into to develop the property.

12. The 1st respondent, after satisfying with the condition of the building, had granted approval for demolition of the buildings. It is also the case of the 3rd respondent that the sunshade had fallen down causing injury to one Mrs.Mahalakshmi and in this respect, a Criminal case was also registered and the 3rd respondent has paid compensation to the victim.

13. The learned counsel for the petitioner placing reliance on the decision of this Court in the case of Rama Devi vs. Commissioner, Corporation of Chennai, reported in 2013 (4) MLJ

423, contended that the demolition of the building should have been taken only after vacating the petitioner by following due process of law. I am not able to agree with the contentions of the learned counsel for the petitioner and in my considered opinion, the said decision has no application to the case on hand for the reason that the condition of the building did not arise for consideration in that case.

14. It is to be noted that as per Section 246-A of the Chennai City Municipal Corporation Act, the person who intends to demolish the building, shall submit an application to the Commissioner seeking permission to execute the work. Unless and until such permission is granted by the Commissioner, work shall not be executed and he shall also comply with the conditions imposed therein. Section 258 of the said Act empowers the Commissioner to pass orders regarding the owner or the occupier of the building, which is in ruinous state or dangers to the passer-by, occupiers of neighbouring superstructures to fence off, take down, secure or repair such structure so as to prevent any danger therefrom. Sub-section (3) of Section 258 of the said Act enables the Commissioner to order immediate evacuation of the inmates, if in the opinion of the Commissioner, the superstructure is imminently dangerous to the inmates, even with the help of the Police Officer.

15. A reading of the above provisions makes it clear that the person who intends to demolish the building, has to seek permission and only after obtaining permission, the work shall be executed by complying with the conditions imposed therein. If the Commissioner opines that the building is in a dangerous condition, order under Section 258 can be passed, even without any application. It does not mean that in the cases of granting permission under Section 246A, the building was in a good condition.

16. Admittedly, the other buildings connected with the building in dispute, were already demolished and the demised premises is being used by the petitioner for non residential purposes and he is running a business. It is the case of the 3rd respondent that during implementation of Metro Rail Project and forming tunnel, the condition of the building has weakened and it is in a dilapidated condition. The statement of the 3rd respondent is not disputed by the petitioner. Further, the apprehension expressed by the 3rd respondent that in the event of the building collapses, and causes any casualty or injury, the 3rd respondent being the owner of the property would be held responsible, seems to be genuine and it cannot be brushed aside lightly. Merely because the eviction proceedings initiated against the petitioner is pending, the petitioner is not entitled to seek direction against the official respondents,

unless stability of the building is proved. But no material has been produced by the petitioner to establish the building is in a good condition.

17. In the light of the above undisputed facts, in the considered opinion of this Court, it would not be appropriate to issue directions as sought for by the petitioner. I do not find any merit in this writ petition. The writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed. Indisputably, the 3rd respondent has initiated eviction proceedings against the petitioner, and till he is evicted from the premises, if any untoward incident takes place, either to the tenant or to the 3rd parties, the petitioner shall be responsible for the same.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Commissioner,
Greater Chennai Corporation,
Rippon Building, Chennai 600 003.
2. The Assistant Commissioner,
Zone IX, Corporation of Chennai,
Lake View Road,
Nungambakkam, Chennai 600 034.

+2cc to Mr.Ashok Menon, Advocate, S.R.No.5020

+1cc to Mr.K.V.Sundarajan, Advocate, S.R.No.5252

+1cc to Mr.T.C.Gopala Krishnan, Advocate, S.R.No.4943

W.P.No.31380 of 2017

KAN(CO)

RRK(24/01/2018)

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