

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.31638 of 2017 &

W.M.P.No.34756 of 2017

S.Namachivayam .. Petitioner

Vs.

- 1.State of Tamil Nadu,
Rep. by the Secretary to Government,
Municipal Administration and Water Supply Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.
- 2.The Regional Deputy Commissioner (South),
Greater Chennai Corporation,
Rippon Building, Chennai - 600 003.
- 3.The Zonal Officer,
13th Zone, Corporation of Chennai,
Adyar, Chennai - 600 020.
- 4.Ms.Subashini, .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the second respondent relating to the impugned notice No.10, dated 27.11.2017 issued under Section 258 of the Chennai City Municipal Corporation Act, 1919 in respect of the property at 12/11, Sri Ram Nagar Main Road, Sri Ram Nagar, Chennai-20 and quash the same.

For Petitioner : Mrs.R.Maheswari
For Respondents : Mr.K.J.Sivakumar
Government Advocate for R-1

Mr.T.C.Gopalakrishnan
Standing Counsel for R-2 and R-3

Mr.Balasubramanian for R-4

O R D E R

Heard Mrs.R.Maheswari, learned counsel appearing for the petitioner, Mr.K.J.Sivakumar, learned Government Advocate appearing for the first respondent; Mr.T.C.Gopalakrishnan, learned Standing Counsel appearing for the respondents 2 and 3 and Mr.Balasubramanian, learned counsel appearing for the fourth respondent.

2. The petitioner has filed this Writ Petition to quash the impugned order of the second respondent dated 27.11.2017 issued under Section 258 of the Chennai City Municipal Corporation Act, 1919 in respect of the property at 12/11, Sri Ram Nagar Main Road, Sri Ram Nagar, Chennai-20.

3. The case of the petitioner is that one T.Ramanathan was the owner of the property bearing Door No.5/11, Bajanaik Koil Street, Sri Ram Nagar, Taramani P.O., Chennai, and the petitioner, being a tenant, was paying rent regularly and the said T.Ramanathan passed away on 01.11.2000. Thereafter, the petitioner was paying rent to the fourth respondent under the impression that she was the owner of the property and subsequently, the petitioner filed R.C.O.P.No.455 of 2011 under Section 8(5) of the Tamil Nadu Buildings (Lease & Rent Control) Act, seeking permission to deposit rent in the Court, since there was a dispute with regard to ownership of the same is pending in O.P.No.409 of 2001 on the file of High Court, Madras.

4. It is further stated that the fourth respondent had demolished the electricity meter box, so, the petitioner approached the Rent Controller by filing R.C.O.P.No.1944 of 2011 for restoration of electricity service connection. While so, the second respondent issued the impugned notice dated 27.11.2017 describing that the building is in dilapidated condition.

5. The learned counsel for the petitioner submitted that the impugned notice was issued at the instance of the fourth respondent and in fact the demised premises is in good condition and if there is any damage, the petitioner is ready to carry out the repairs.

6. Per contra, learned Government Advocate for the first respondent and the learned Standing Counsel for the second and third respondents contended that there was no collusion between the fourth respondent and the officials of the respondents 1 to 3 and the impugned notice came to be issued after the first respondent satisfied that the building is in a dilapidated condition and the petitioner was granted 7 days time to rectify the defects and instead of rectifying the same, present Writ Petition is filed.

7. The learned counsel for the fourth respondent submitted that on 10.09.2001 itself the petitioner had given an undertaking letter to the fourth respondent to deliver the vacant possession to her. It is further submitted that the Certificate issued by the Engineer-Mr.B.Balamurugan would show that the building was in a dilapidated condition and requires immediate demolition. So, the tenant cannot be permitted to carry out the repairs in the building.

8. This Court, by an order dated 05.12.2017 appointed an Advocate Commissioner to note down the physical feature of the building with the assistance of Executive Engineer of the Corporation, to ascertain the status of the building. Accordingly, the Executive Engineer, Zone-13 and the learned Advocate Commissioner have inspected the building and filed a report. The Report of the Assistant Engineer dated 21.12.2017 read as follows:-

"

- The said Building is having 3 rooms and 1 toilet and the roof of the building is partly Madras terrace and partly tiled roof. The rafters of both the Madras terrace and tiled roof are ruined state and not withstand any load and impact.
- All the walls are in the lime mortar construction also have vertical and horizontal cracks are noticed which is formed due to the age of the building.

Hence, it is certified that, this building is dilapidated and not fit for human habitation and further it is dangerous to the human lives in and around of the building."

9. Section 258 of the Chennai City Municipal Corporation Act, 1919 reads as follows:-

258. Precautions in case of dangerous structures.-

(1) If any (structure) be deemed by the Commissioner to be in a ruinous state or dangerous to passers-by or to the occupiers of neighbouring structures, the Commissioner may, by notice, require the owner or occupier to fence off, take down, secure or repair such (structure) so as to prevent any danger therefrom.

(2) If immediate action is necessary, the Commissioner may himself before giving such notice or before the period of notice expires fence off, take down, secure or repair such (structure) or fence off a part of any street or take such temporary measures as he thinks fit to prevent danger and the cost of doing so shall be recoverable from the owner or occupier in the manner provided in Section 387.

(3) If in the Commissioner's opinion, the said (structure) is imminently dangerous to the inmate thereof, the Commissioner shall order the immediate evacuation thereof and any person disobeying may be removed by any police officer."

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. In that view of the matter, I do not find any merit in the Writ Petition warranting interference of this Court. In the result, the Writ Petition is dismissed. It is needless to mention that the official respondents shall take further action in accordance with law. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

r n s

To

1.The Secretary to Government,
Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

2.The Regional Deputy Commissioner (South),
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Rippon Building, Chennai - 600 003.

3.The Zonal Officer,
13th Zone, Corporation of Chennai,
Adyar, Chennai - 600 020.

+ 1 cc to Mrs.R.Maheswari Advocate,SR.328

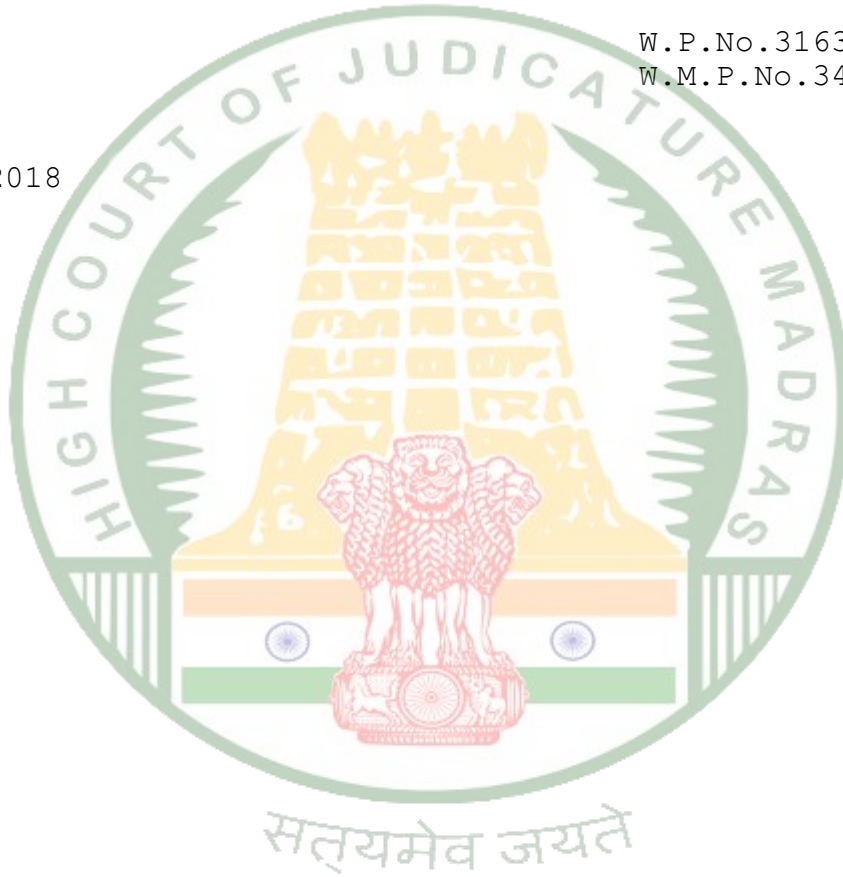
+ 1 cc to Mr.T.C.Gopalakrishnan Advocate,SR.287

+ 2 cc to Mr.Balasubramanian Advocate,SR.252

+ 1 cc to The Govt.Pleader, SR.679

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