

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.04.2018

Pronounced on : 26.04.2018

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.Nos.8887, 8757, 8421, 8284 and 7795 of 2018

and

W.M.P.Nos.10741, 10742, 10659, 10375,
10376, 10244, 10245 and 9709 of 2018

Shajahan ..Petitioner
(in W.P.No.8887 of 2018)

S.Kumar ..Petitioner
(in W.P.No.8757 of 2018)

M.T.K.Mohammed ..Petitioner
(in W.P.No.8421 of 2018)

Mohammed Haniffa ..Petitioner
(in W.P.No.8284 of 2018)

V.Chandrasekaran ..Petitioner
(in W.P.No.7795 of 2018)

Vs

1.The Commissioner,
Corporation of Coimbatore,
Coimbatore - 641 001.

2.P.B.Nawas Khan

3.Nilar

4.V.B.Padmanathan

.. Respondents
(in all W.Ps)

Writ Petition in W.P.No.8887 of 2018 is filed under Article 226 of the Constitution of India, seeking issuance of Writ of Mandamus, directing the first respondent to de-lock and de-seal the business premises of the petitioner being the shop bearing Door No.1592, (Amudham Canteen) State Bank Road (Near

Langa Corner) in Anuparpalayam Village, Coimbatore - 641 018 forthwith.

Writ Petition in W.P.No.8757 of 2018 is filed under Article 226 of the Constitution of India, seeking issuance of Writ of Mandamus, directing the first respondent to de-lock and de-seal the business premises of the petitioner being the shop bearing Door No.77-78, State Bank Road (Near Lanka Corner) in Anuparpalayam Village, Coimbatore - 641 018 forthwith.

Writ Petition in W.P.No.8421 of 2018 is filed under Article 226 of the Constitution of India, seeking issuance of Writ of Mandamus, directing the first respondent to de-lock and de-seal the business premises of the petitioner being the shop bearing Door No.79, (American Stores) State Bank Road (Near Lanka Corner) in Anuparpalayam Village, Coimbatore - 641 018 forthwith.

Writ Petition in W.P.No.8284 of 2018 is filed under Article 226 of the Constitution of India, seeking issuance of Writ of Mandamus, directing the first respondent to de-lock and de-seal the business premises of the petitioner being the shop bearing Door No.1584, (Rowther Briyani Shop) State Bank Road (Near Langa Corner) in Anuparpalayam Village, Coimbatore - 641 018 forthwith.

Writ Petition in W.P.No.7795 of 2018 is filed under Article 226 of the Constitution of India, seeking issuance of Writ of Mandamus, directing the first respondent to de-lock and de-seal the business premises of the petitioner being the shop measuring 240 sq.ft facing west bearing Door No.76, State Bank Road (Near Lanka Corner) Coimbatore - 641 018 forthwith.

For Petitioners : Mr.C.Prabhakaran
(in W.P.Nos.8887, 8421, 8284 of 2018)
Mr.K.Govi Ganesan
(in W.P.No.8757 and 7795 of 2018)

For Respondents : Mr.J.Sathyanarayana Prasad for R1
(in all W.Ps)
Mr.V.Raghavachari
for Mr.A.Shamsudeen Raja for R2
(in all W.Ps)
Mr.E.K.Kumaresan for R3
(in all W.Ps)
No appearance for R4

C O M M O N O R D E R

The petitioners have come up with these Writ Petitions for issuance of Writs of Mandamus to direct the first respondent to de-lock and de-seal the business premises of the petitioners' shops in State Bank Road (Near Lanka Corner) Coimbatore - 641 018.

2. According to the petitioners, the property in question originally belonged to one V.B.Rangaraj, V.B.Devarjan, V.B.Selvaraj and V.B.Padmanabha, who are the sons of V.Balasamy Naidu., and they became tenants, about 3 to 4 decades ago and they have been paying the rent regularly. A suit in O.S.No.496 of 2014, instituted by one of the co-owners of the property for partition is still pending.

3. The petitioner would allege that in the year 2000, three brothers out of four, had alienated their shares to the private respondents. Thereafter, they started demanding enhanced rent, so there was exchange of notice in the year 2013. Further there was a threat of dispossession, hence Civil Suits have been filed by the tenants seeking permanent injunction restraining the landlords from dispossessing the tenants, except by following the due process of law. The landlords instead of approaching the Rent Controller, has now sought the help of Corporation to evict them indirectly by sealing the premises. Accordingly, the first respondent had placed the premises under lock and seal on 28.03.2018. Hence, they are before this Court with these Writ Petitions.

4. The learned counsel for the petitioners, by reiterating the averments in the affidavit, contended that the landlords have adopted a short circuit method to evict the statutory tenants and unless, the tenants are evicted, by following the process, the first respondent has no power to seal the premises, by placing reliance on the decisions of this Court in the case of Rama Devi vs. Commissioner, Corporation of Chennai, Ripon Buildings, Chennai, reported in 2013 (4) MLJ 423 and an unreported judgment in W.P.No.27658 of 2016 dated 09.08.2016. It is further contended that the shops have been sealed without any notice and affording opportunity to the petitioners.

5. This Court in the cases cited above has held that even if the building is in a dilapidated condition and it is occupied by tenants, normal course is to approach the Rent Controller under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act and as per Section 264 (A) of the

Chennai City Municipal Corporation Act, the Commissioner, shall grant permission to demolish the building only after the tenants are evicted from the building.

6. The learned Standing Counsel for the first respondent submitted that the District Collector has received a representation from a student to take action against the building, which was in a dangerous condition. The District Collector, in turn, had referred the matter to the first respondent to take necessary action. The Commissioner, after getting report from the experts and having found that the building is 90 years old and it is in a dilapidated condition, issued notices dated 09.06.2017 and 03.11.2017 to the owners as well as the occupants to vacate the premises under Section 327 of the Coimbatore City Municipal Corporation Act. Most of the tenants have received the notice and an affixture was made when the private respondents have refused to receive the notice.

7. It is further submitted that out 13 tenants, two have vacated the shops, five other tenants have sought permission of the first respondent to remove their articles / belongings and the rest have filed these Writ Petitions. It is contended that the orders passed under Section 327 of the Coimbatore City Municipal Corporation Act was not challenged and the building was sealed on 28.03.2018 after providing ample opportunity to the necessary parties. So, the petitioners are not entitled for any relief in these Writ Petitions.

8. The learned counsel for the respondents 2 & 3 submitted that the landlords, after receiving notice from the Corporation in the month of May 2017, issued a notice to the petitioners in the month of September 2017 requesting them to vacate the premises. The first respondent had taken action based on the inspection report submitted by the Engineers of the Corporation. The petitioners deliberately suppressing material facts of the notices issued by the respondents, have instituted the suits with an ulterior motive. After the co-owners sold their shares, the partition suit was disposed of and as on date there is no suit is pending with regard to title.

9. It is further submitted that the Corporation had taken the action of sealing the premises on the basis of the report of the experts and the allegations of the petitioners that at the instigation of the private respondents the premises was sealed are totally false and not supported by any materials. In support of their contentions, the following judgments are relied on.

10. Mrs.A.Sreedevi vs. The Commissioner, Corporation of Chennai and others, reported in 2004 1 LW 109, this Court held that the provisions of Section 258 enables the Commissioner to issue notice, requiring the owner or occupier to fence off, take down, secure or repair any structure that was found to be in a ruinous state or dangerous to passers by or to the occupiers of neighbouring structures, so as to prevent any danger therefrom. The relevant portion of the order is extracted below:

"21.

.....

The above provisions enable the Commissioner to issue notice requiring the owner or occupier to fence off, take down, secure or repair any structure that was found to be in a ruinous state or dangerous to passers by or to the occupiers of neighbouring structures, so as to prevent any danger therefrom. If the condition of the structure or building requires immediate action, the Commissioner may himself even before giving notice or before the period of notice expires, fence off, take down, secure or repair such structure to prevent danger and recover the cost of doing from the owner or occupier in the manner provided in Section 387 of the Act.

.....

.....

I have gone through all the details and I am satisfied that the Commissioner has considered all the relevant materials and by virtue of the power conferred under Section 258 of the M.C.M.C.Act, taking note of the design structure, actual reinforcement in the columns which were unsafe, issued notice under sub-section (2) of Section 258. I have already referred to the fact that the construction and above the permissible area namely 5th floor to 8th floor is an unauthorised one.

.....

.....

I hold that the Commissioner, Corporation of Chennai is perfectly right in issuing notice under sub-section (2) of Section 258 and there is no ground for interference. It is also settled law that even after obtaining planning permission under the Tamil Nadu Town and Country Planning Act, the construction of the building is subject to fulfilling the provisions of M.C.M.C. Act. I conclude that notice issued under Section 258 as well as 378 of M.C.M.C. Act are valid. "

11. The Division Bench in W.P.No.8697 of 2009 filed by the tenants challenging the vires of Section 327 (1) of the Coimbatore City Municipal Corporation Act on the ground that after dismissal of the eviction petition filed by the landlords under Section 14(1)(b) of the Tamil Nadu Building Lease and Rent Control Act, the Commissioner has no authority to issue the demolition notice, while dismissing the Writ Petition on 23.11.2017, has observed as follows:

"20. By virtue of Section 327, the Commissioner of Corporation is empowered to take action to prevent danger to life and property from structures found to be a threat, as held by this Court in Mrs.A.Sreedevi v. Commissioner, Corporation of Chennai, 2004 (1) MLJ 200. The Coimbatore City Municipal Corporation Act was enacted in the year 1981 and has been in force for over three and half decades.

21. The State has a constitutional obligation to protect the lives of its citizens. Ruinous and/or dangerously dilapidated buildings pose a risk to the lives and personal safety of passers-by, apart from the occupants and others who might enter the buildings. In our view, there is no discrimination in issuing notice for demolition of a dangerously dilapidated building, which poses risk to the lives and safety of the people. It cannot be said that the said provision is arbitrary. There is a provision for notice."

12. In similar circumstances in W.P.Nos.31638 of 2017 and 31380 of 2017, by order dated 30.01.2018 & 23.01.2018, respectively, I have held as follows:

In W.P.No.31638 of 2017,

"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."

In W.P.No.31380 of 2017,

"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."

13. In the light of the recent judgment of the Division Bench, with great respect, I am not able to follow the decisions relied on by the petitioners.

14. The Division Bench in the judgment dated 23.11.2017 referred to supra, and the learned Single Judge of this Court, in the judgment in 2004 (1) LW 409 has held that the Commissioner of the Municipal Corporation has got powers to issue and pass appropriate orders in respect of the superstructure that was found to be in a ruinous or dangerous state or to the passerby or to the occupier of the neighbouring

structures and the State has a constitutional obligation to protect the lives of its citizens.

15. In the instant case, the action of the respondent is assailed mainly contending that the premises was sealed at instance of the landlords, but the petitioners have not produced any materials in support of their case. Mere pendency of cases before the Civil Court and the Rent Controller is not a bar for the authorities of the Municipal Corporation to take action if they find the building is in a dangerous condition. As held by this Court, it is the obligation of the authorities to protect the lives of the innocent general public. The perusal of the photographs produced by the respondents would make it clear that the buildings in question is in a dilapidated condition. Therefore, I do not find any illegality in the action taken by the first respondent, based on the report of the experts.

16. In view of the above findings, the Writ Petitions fail and they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-vii)

//True Copy//

Sub Assistant Registrar

pvs

To

The Commissioner,
Corporation of Coimbatore,
Coimbatore - 641 001.

+1cc to Mr.E.K.KUMARESAN Advocate, S.R.No. 31479

+2cc to Mr.K.GОВI GANESAN Advocate, S.R.No.31484 & 31485

+3cc to Mr.W.CAMYLES GANDHI, Advocate, S.R.No. 31167 TO

31169

+5cc to Mr.J.SATHYANARAYANA PRASED, Advocate,

S.R.No.31157 TO 31161

+5cc to Mr.A.SHAMSUDEEN RAJA, Advocate, S.R.No. 31119 to

31123

Pre-Delivery Order
W.P.Nos.8887, 8757, 8421,
8284 and 7795 of 2018

BR(CO)

TR(27/04/2018)