

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.24290 and 24291 of 2017
and
W.M.P.No.25673 and 25674 of 2017

Mahaveer Jain ... Petitioner in W.P.No.24290/17

Dinesh Jain ... Petitioner in W.P.No.24291/17

Vs.

1. The Commissioner,
Greater Chennai Corporation,
Rippon Buildings, Chennai-600 003.
2. The Executive Engineer, Zone-5,
Greater Chennai Corporation,
No.105, Basin Bridge Road, Chennai-600 079.
3. The Asst. Executive Engineer,
Greater Chennai Corporation, Unit-13
No.105, Basin Bridge Road, Chennai-600 079.
4. Sri Jain Swetamber Terapanthi Trust Board,
Rep. by its Managing Trustee,
Gokul Chnd Bhandari,
No.34, Mangappan Street,
Sowcarpet, Chennai-600 079 ... Respondents in both the W.P.

Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of Writs of Mandamus to forbear the respondents 1 to 3 and their men and subordinates from in any manner, locking and sealing the shop portion under the occupation of the petitioners and running the business under the name and style of "M/s.Mahaveer Enterprises" (in W.P.No.24290 of 2017) and M/s.Dinesh Metal Distributors" (in W.P.No.24291 of 2017) situated in the Ground Floor of the premises bearing Door No.34, Mangappan Street (Facing Ramanan Road), Sowcarpet, Chennai-600 079, pursuant to the Notices, vide Letter No.05/03475/2017, dated 10.08.2017.

For petitioners : M/s.K.Prem Kumar
For respondents : Mr.R.Arun Mozhi for RR-1 to 3
M/s.T.Karthikeyan and for R-4

ORDER

(The Order of the Court was made by S.Vaidyanathan, J)

The petitioners have come forward with these Writ Petitions praying for issuance of Writs of Mandamus to forbear the respondents 1 to 3 and their men and subordinates from in any manner, locking and sealing the shop portion under the occupation of the petitioners and running the business under the name and style of "M/s.Mahaveer Enterprises" (in W.P.No.24290 of 2017) and M/s.Dinesh Metal Distributors" (in W.P.No.24291 of 2017) situated in the Ground Floor of the premises bearing Door No.34, Managappan Street (Facing Ramanan Road), Sowcarpet, Chennai-600 079, pursuant to the Notices, vide Letter No.05/03475/2017, dated 10.08.2017.

2. According to the petitioners, they are tenants under the fourth respondent-Trust Board and that the petitioners have entered into rental agreements with the fourth respondent and are running the respective shops stated supra, in the Ground Floor of the building. It is submitted that the rent control proceedings are pending and in collusion with the officials, the petitioners are trying to be evicted from the places where they are continuing as tenants.

3. The respondents 1 to 3/Corporation of Chennai have filed counter affidavit, dated 25.10.2017, wherein it is stated in paragraphs 9 and 10 as follows:

"9. I respectfully submit that as per the direction of this Hon'ble High Court the Corporation officials inspected the site on 03.10.2017 No.34, Managappan Street (Facing Ramanan Road), Sowcarpet, Chennai-600 079 and found the deviation of the sanctioned plan as follows:

Sl. No.	Description	As per Plan	As per Site	Deviated / unauthorised
1	Ground Floor	4165 Sft	4165 Sft / office and shops	4165 Sft
2	First Floor	4164 Sft / Office	4165 Sft / Office	4165 Sft

Sl. No.	Description	As per Plan	As per Site	Deviated / unauthorised
3	Second Floor	4165 Sft / Office	4165 Sft / Office	4165 Sft
4	Third floor	4165 Sft / Office	4165 Sft / Office	4165 Sft
5	Fourth floor	Nil	4165 Sft / Office	4165 Sft
6	Fifth floor	Nil	920 Sft / Head room, Rest Room, Store Room	920 Sft

10. On verification of the plan it was found that the fourth respondent had put up unauthorised construction converting the car parking area in the ground floor as two commercial shops, the fourth floor as fully unauthorised and the fifth floor as partly unauthorised (920 Sft). Further action will be taken as per Tamil Nadu Town and Country Planning Act, 1971."

4. It is stated by the learned counsel for the respondents 1 to 3/Corporation of Chennai that there is violation of construction with regard to the fourth and fifth floors and that the ground floor which is meant for car parking, had been converted into two commercial shops and that the petitioners are carrying on commercial activities.

5. Learned counsel for the fourth respondent stated that the fourth respondent is a public charitable Trust of the Jain community and that the earlier Trustees have constructed the building in violation of the plan and that they are willing to restore the property in accordance with the plan and are also willing to comply with the said notices dated 10.08.2017 issued by the Corporation of Chennai for locking and sealing the premises.

6. In reply, learned counsel for the petitioners submitted that the petitioners may be given sufficient time to vacate the premises in question and that the fourth respondent is in collusion with the Corporation of Chennai and trying to evict the petitioners from the premises.

7. Heard both sides and perused the materials available on record.

8. It is not in dispute that the petitioners are tenants under the fourth respondent-Trust. As admitted by the fourth respondent-Trust itself, there is violation of construction and that they are willing to rectify the defects and restore the building, so that it will be in accordance with the sanctioned building plan. Merely because there is illegality committed by the erstwhile Trustees and that there is conversion of the car parking into commercial places/shops and that the petitioners are permitted to occupy the places as tenants, will not justify the unauthorised occupation into authorised one. Since the fourth respondent has agreed to restore the building in question in conformity with the sanctioned plan, 15 days' time is granted to the writ petitioners from the date of receipt of a copy of this order, to vacate the places/shops in question where they are continuing as tenants. Similarly, the fourth respondent-Trust Board shall ensure that the building in question is brought in accordance with the sanctioned plan within one month from the date the petitioners vacate the premises, failing which, it is open for the respondents 1 to 3/Corporation of Chennai to demolish the structure(s) and collect necessary demolition charges from the fourth respondent. It is needless to mention that till the demolition takes place, the electricity supply to the violated portions of the building in question, shall be disconnected forthwith and the respondents 1 to 3/Corporation of Chennai shall duly inform the concerned Assistant Engineer of the TNEB in the area to disconnect the electricity supply as stated supra.

9. With the above observations and directions, the Writ Petitions are disposed of. No costs. Consequently, W.M.Ps. are closed.

Sd/-
Assistant Registrar(IX)

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Sub Assistant Registrar

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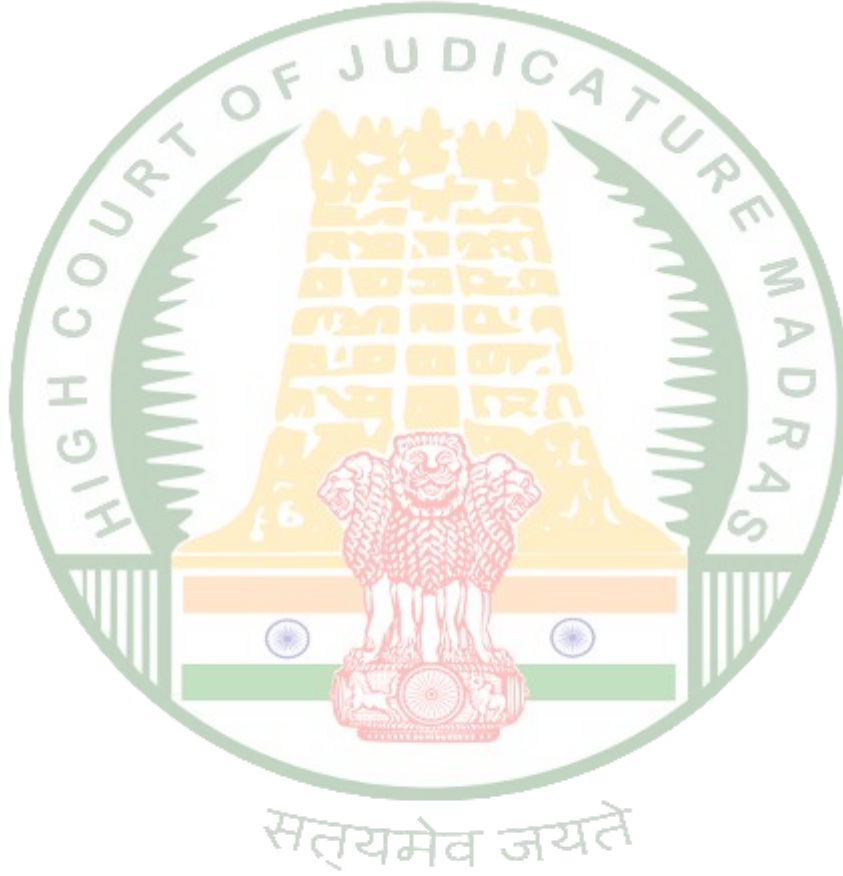
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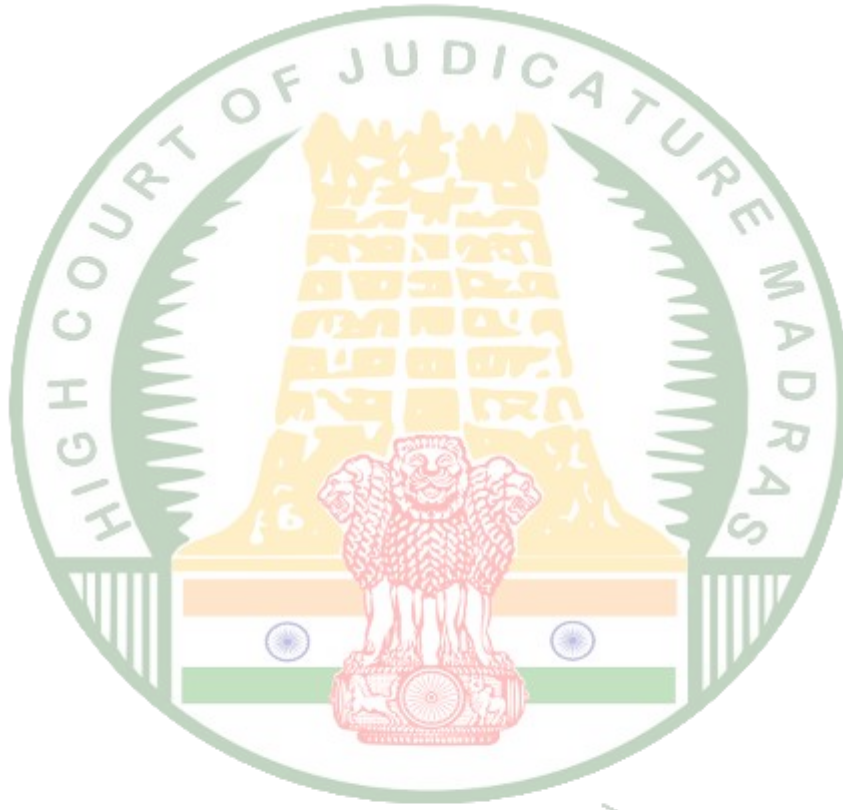
+1cc to Mr.R.Arulmozhi, Advocate, S.R.No.7637
+2cc to Mr.K.Premkumar, Advocate, S.R.No.7182
+2cc to Mr.Mahendra Bhansali, Advocate, S.R.No.9889, 9890

W.P.Nos.24290 and 24291 of 2017

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