

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 21.06.2018	Delivered on 12.07.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1507 of 2016
and CMP Nos.18586 & 18587 of 2016

P. Zainuddin
Rep. By his Power of Attorney Holder,
P.Nazeer,
"Sovereign Travel Goods"
Old No.108 (Old No.180)
NSC Bose Road, Edapalayam,
Chennai 600 079.

Cause title accepted vide order of this Court
dated 02.11.2016 made in CMP No.17062/2016
in WA SR No.68342/2016 Appellant

versus

1. Sathish Kumar
2. The Commissioner,
Corporation of Chennai,
Ribbon Buildings,
Chennai.
3. The Regional Deputy,
Commissioner of Corporation,
No.62, Basin Bridge Road,
Chennai.
4. K.Murali
Proprietor of Malick Medicals,
Old No.108 (Old No.180)
NSC Bose Road, Edapalayam,
Chennai 600 079.
5. Vathsavardhan ... Respondents

Appeal filed against the order passed by this Court dated
09.08.2016 passed in W.P.No.9604 of 2015.

PRAYER IN W.P.No.9604 of 2015:

Writ petition has been filed, Under Article 226 of the Constitution of India, praying that this court may be pleased to issue a Writ of Mandamus, directing the first and the second respondents to demolish the subject building of this Writ Petition, in accordance with law.

For appellant : Mr.R.Parthasarathy

For Respondents : Mr.Perumbulavil Radhakrishnan for R1

Mrs. Narmadha Sampath
Additional Advocate General
for M/s. R.Arunmozhi, for RR 2 & 3

Mr.K.Shakespeare for R4

Mr.Dharanitharan for R5

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

This intra Court Appeal is at the instance of the 4th respondent in WP No.9604 of 2015. The said Writ Petition was filed by the 1st respondent herein seeking a Writ of Mandamus, directing the respondents 2 and 3 herein to take action to demolish the subject building exercising their powers under Section 258 of the Chennai City Municipal Corporation Act, 1919.

The brief facts that led to the filing of the Writ Petition are as follows:

2. The 1st respondent herein claims that he along with his wife had purchased the property in question, under four Registered Sale Deeds dated 01.08.2014 and 22.08.2014. The property is situated in Netaji Subash Chandra Bose Road, George Town, Chennai, having an extent of 1995 sq.ft. The same is in possession of the respondents 3 and 4 who are tenants of the vendor of the 1st respondent. After the purchase, it appears, that the 1st respondent had filed RCOP Nos.305 & 306 of 2015, against the tenants viz. the appellant herein and the 4th respondent. Even during the pendency of the said Rent Control Original Petitions, the 1st respondent had come forward with the above Writ Petition, seeking a direction to the Chennai Corporation to exercise its powers under Section 258 of the Chennai City Municipal Corporation Act, 1919, and take action to demolish the building.

3. The Writ Petition was resisted by the respondents

particularly the tenants contending that this Writ Petition itself is a short cut method adopted by the 1st respondent, who claims to be the purchaser of the property from the erstwhile owners in the year 2014, to evict the tenants. The tenants being statutory tenants entitled to protection under the Tamil Nadu Buildings (Lease and Rent Control) Act and cannot be evicted except by following the procedure prescribed under the said Act. In fact, Section 10 of the said Act provides that no tenant of a building shall be evicted, whether in execution of a decree or otherwise except in accordance with the provisions of Section 10 or Sections 14 to 16 of the said enactment.

4. The appellant and the 4th respondent would also contend that the building is not in a dilapidated condition or is there an imminent threat to the passers by or to the occupiers of the building. The 3rd respondent herein, viz. the Executive Engineer of the Chennai City Municipal Corporation, filed a report pending the Writ Petition. Surprisingly, even during the pendency of the Writ Petition, the 2nd respondent, viz. the Commissioner issued a notice purportedly under Section 258 of the Chennai City Municipal Corporation Act, 1919, on 20.11.2015.

The said notice reads as follows:

"The structure at Door No.180, N.S.C.Bose Road, George Town, Chennai 600 003 is deemed by the undersigned to be in a ruinous state / dangerous to passersby / to the occupiers of the neighboring structure. Therefore you the owner / occupier is required to fence off, take down, secure or repair the above mentioned structure so as to be prevent any danger there from within a period of 15 days from the date of receipt of this notice, failing which the undersigned himself will fence off, take down, secure or repair such (Structure) or fence off a part of any street or take such temporary measures as the thinks fit to prevent danger and the cost of doing so shall be recoverable from the owner or occupier in the matter provided in Section 387 of MCMC Act IV of 1919."

5. The learned Single Judge, who heard the Writ Petition, refused to issue a Writ of Mandamus as prayed for. Taking note of the fact that the 1st respondent had already approached the Competent Court seeking relief of eviction, the learned Single Judge, however, observed that it is open to the Corporation to take action if circumstances for invoking the provision of Section 258 existed in the case on hand. The appellant is aggrieved by that portion of the order which grants a licence to the Chennai Corporation, viz. the respondents 2 and 3 to proceed under Section 258 of the Chennai City Municipal Corporation Act,

1919.

6. We have heard Mr.R.Parthasarathy, learned counsel appearing for the appellant, Mr.Perumbulavil Radhakrishnan, learned counsel appearing for the 1st Respondent, Mrs. Narmadha Sampath, learned Additional Advocate General appearing for Mr.R.Arunmozhi, learned counsel the respondents 2 & 3, Mr.K.Shakespeare, learned counsel appearing for the 4th respondent and Mr.Dharanitharan, learned counsel appearing for the 5th respondent.

7. Mr.R.Parthasarathy, learned counsel appearing for the appellant would vehemently contend that the Writ Petition itself is an abuse of process of Court has been filed only with a view to evict the persons in occupation by hook or crook. He would also point out that the appellant had raised a plea of absence of relationship of the landlord and the tenant in the Rent Control proceedings in RCOP No.305 of 2015 and the same was accepted by the Rent Controller. It is also seen that after the dismissal of the Rent Control proceedings, the 1st respondent herein had filed a Civil Suit seeking declaration of his title and recovery of possession which is said to be pending on the file of this Court. Therefore, in view of the said subsequent developments, the learned counsel would submit that the learned Single Judge was not right in making the observations, which could be used as a tool by the 1st respondent in collusion with the Officers of the Chennai Corporation, which according to him has been amply demonstrated by the fact that the notice under Section 258 of the Chennai City Municipal Corporation Act, 1919, was issued by the Chennai Corporation, even during the pendency of the Writ Petition.

8. Mr.Perumbulavil Radhakrishnan, learned counsel appearing for the 1st Respondent would submit that the 1st respondent had approached this Court only in order to safeguard himself from being mulcted with any liability that may arise if the building which according to him is in a dilapidated condition should crumble causing injury to passers by or the occupants therein.

9. Mrs. Narmadha Sampath, learned Additional Advocate General appearing for the respondents 2 & 3/Corporation would submit that the notice dated 20.11.2015 under Section 258 of the Chennai City Municipal Corporation Act, 1919, was issued only after an inspection of the property and after the Authorities found the building to be in a very dangerous condition.

10. Mr.K.Shakespeare, learned counsel appearing for the 4th respondent would adopt the arguments of Mr.Parthasarathy, learned counsel appearing for the appellant. During the

pendency of the Writ Appeal, by an order dated 14.12.2016, a Division Bench of this Court had appointed an Expert Committee to study the structural stability of the building and the Expert committee consisting of Experts from the Anna University has filed a Report. The conclusions of the Expert Committee and its recommendations are as follows:

"5.0 SUMMARY AND RECOMMENDATIONS

The following recommendations are made in connection with the structural stability and suitability of the building premises No.108 (Old No.180), Netaji Subash Chandra Bose Road, (China Bazaar), George Town, Chennai 600 001:

1)The foundation of the building is presumed to be stable as of now considering the overall performances of the load bearing walls of the structure.

2)The calculated stress on the wall cross section is 0.32 N/mm^2 (Refer Annexure-1). But, actual capacity of the brick arrived based on the testing, carried out on brick sample collected from the site, is 3.26 N/mm^2 , which leads to the masonry strength of 0.33 N/mm^2 . The stress acting on the wall is 0.32 N/mm^2 but the actual strength of the masonry wall is 0.33 N/mm^2 . Hence, it is just adequate to carry the load at present condition. However, in the event of unforeseen circumstances, the building may not be safe to withstand the extremes of environmental changes

3)The Madras terrace roof is deteriorated and has led to the excessive deflection of the same. This is evident from the cracks developed at the roof level, even though, it was already strengthened using steel 'I' beams and columns. The strengthening pattern is also asymmetric and non-engineered.

Considering the salient points mentioned above, it is recommended that the roof of the building is unsafe in the present form for human dwelling. Further, it is recommended that the building is structurally unsafe and unsuitable to withstand the load in vagaries of the nature."

After the receipt of the said report, the learned counsel for the appellant took time to file his response with the help of suggestions made by Dr.R.Ambalavanan, Professor of Civil Engineering, Indian Institute of Technology, Madras and the response has been filed. In the said response, the said Expert has concluded as follows:

"After due deliberation of report, physical

inspection and based on empirical calculations, I submit this response and opine that the building premises is structurally safe and there is no need to demolish the same on the premise of 'Vagaries of nature' or 'extremes of environmental changes'. There are well established materials and methods to strengthen old buildings and make them safe against additoinal loads caused by natural phenomenon like earthquake which can be addressed."

11. Thus, we have two conflicting reports by persons of expertise in the field of Civil Engineering. We are not called upon to decide the structural stability. We are only concerned with the scope and power of the Corporation under Section 258 of the Chennai City Municipal Corporation Act, 1919, to take action. 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."

12. The Respondents 2 and 3 had chosen to issue notice under invoking the said Section which already been extracted earlier. Section 258 requires, the Commissioner to come to a conclusion that a structure is in a ruinous state or dangerous to passers-by or to the occupiers of neighboring structures, he may, by notice, require the owner or occupier to fence off, take down, so as own, secure or repair such structure so as to prevent any danger therefrom. The notice already extracted would show that just a reproduction of Section 258(1). This be very form of notice shows a total non-application of mind on the part of the Authorities to the powers that are conferred on them under Section 258 of the Chennai City Municipal Corporation Act,

1919.

13. A reading of Section 258(1) would shows that if in the opinion of the Commissioner a Structure is in a runious stage or it is dangerous to passers by or to the occupiers of neighbouring structures, the Commissioner is empowered to require, by a notice, the owner or occupier to fence off, take down, secure or repair such structure so as to prevent any danger therefrom.

14. The options set out in Section 258(1), viz. to fence off, to take down, to secure or to repair are definitely alternatives and they cannot be done simultaneously. While issuing a notice under Section 258, it is for the Authorities to prescribe as to what should be the action taken by the owner, in order to prevent any danger. They can either require the owner to fence off or to take down or to secure or to repair such structure, all the above four cannot be done simultaneously. We are therefore driven to conclude that the very notice issued on 20.11.2015 is at the behest of the 1st respondent and is nothing but an attempt to evict the occupiers of the building.

15. At the earliest point of time even before this Court directed a Report to be filed by Experts from the Anna University, the Executive Engineer of the 2nd respondent Corporation had filed a Report on 22.07.2016. The said Report does not say that the building is in a dangerous condition. The observations made during the inspection which are extracted in the Report are as follows:

"10. I respectfully submit that the following observation are observed during the inspection are as follows:

- a. Materials used brick with lime mortar.
- b. The total extent of the property is around 2000 sq. ft. and consisting of ground floor and first floor.
- c. The building is of Madras Terrace with tile roofing.
- d. The laodbearing walls with wooden structure all over the building.
- e. The age of the building is approximately 100 years old.
- f. The wooden beams are weak in several places.
- g. The wooden stair case leading to first floor is in dangerous condition.

16. These observations would go to show that the wooden beams are weak in several places and the wooden staircase leading to the first floor is in dangerous condition. There is nothing in the report about the structural stability of the said building. One another factor which should not be lost sight is

the verocity of nature that hit the City of Chennai during 2015-2016 in the form of heavy floods and cyclone. The building in question withstood both the extreme weather conditions. However, it cannot be said that it can withstand all natural calamities.

17. As rightly pointed out by Mr.R.Parthasarathy, learned counsel appearing for the appellant the very fact that the building has with stood the above extreme weather conditions in the very recent past would show that the building is strong enough and it is not either in a ruinous stage or dangerous to the passers-by or to the occupiers of adjacent buildings.

18. The grievance of the appellant is that the observations of the learned Single Judge made in paragraph 16 of the order under Appeal are capable of being used as a licence by the respondents 2 and 3 to aid the 1st respondent in achieving his ultimate goal, viz. the eviction of the appellant and the 4th respondent from the premises in question. The sequence of events narrated above fairly justify the said apprehension expressed by the appellant. The earliest Report filed by the Executive Engineer of the 2nd respondent Corporation dated 22.07.2016 does not suggest that the building is in a ruinous stage or dangerous to the occupiers. All that is said is some of the wooden beams are weak and the stair case in a bad condition.

19. Though Mrs.Narmadha Sampath, learned Additional Advocate General appearing for the Corporation would attempt to project that the Officers of the Corporation had done their statutory duty, we see something more in the action of the respondents 2 and 3 particularly in issuing a notice, as extracted above, even during the pendency of the Writ Petition. Though various reasons are attributed to the issuance of the said notice, we are unable to accept those reasons as ones compelling issuance of a notice under Section 258 of the Chennai City Municipal Corporation Act, 1919. Having held that the Writ Petition itself is not bona fide and having taken note of the pendency of the proceedings before this Court and as well as before the Authorities constituted under the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, the learned Single Judge was not justified in observing that it will be open to the 2nd respondent Corporation take action against the occupiers or the owners under Section 258 of the Chennai City Municipal Corporation Act.

20. We are therefore constrained to interfere with the said portion of the order of the learned Single Judge, wherein the learned Single Judge has observed that it would be open to the Corporation to invoke its power under Section 258 if the

conditions stipulated under Section 258 exist.

21. In view of the foregoing reasons, the Writ Appeal will stand allowed, the observations of the learned Single Judge made in paragraph 16 of the order after having dismissed the Writ Petition will stand deleted. We are also of the considered opinion that the officials of the Chennai City Municipal Corporation should be alive to the designs adopted by building owners to get rid of the tenants by enticing the Officials to invoke the provision of Section 258 of the Chennai City Municipal Corporation as the result of such an exercise of power will be in derogation of the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act. It is for the Commissioner of the Chennai Corporation to ensure that the powers under Section 258 are not misused by undesirable elements in their attempt to evict the tenants by defeating the provisions of a welfare statute viz. Tamil Nadu Buildings (Lease and Rent Control) Act.

22. In fine, the Writ Appeal is allowed. The observation of the learned Single Judge in paragraph 16 of the order made in the Writ Petition will stand deleted.

23. Though we are of the firm view that the Writ Petition is an abuse of process of the Court by the 1st respondent, who had claimed title to the property, we, however, refrain from imposing costs taking into account his claim that he is a bona fide purchaser of the property and only after purchase, did he realise that he has purchased litigation along with the property. There will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Commissioner,
Corporation of Chennai,
Ribbon Buildings,
Chennai.

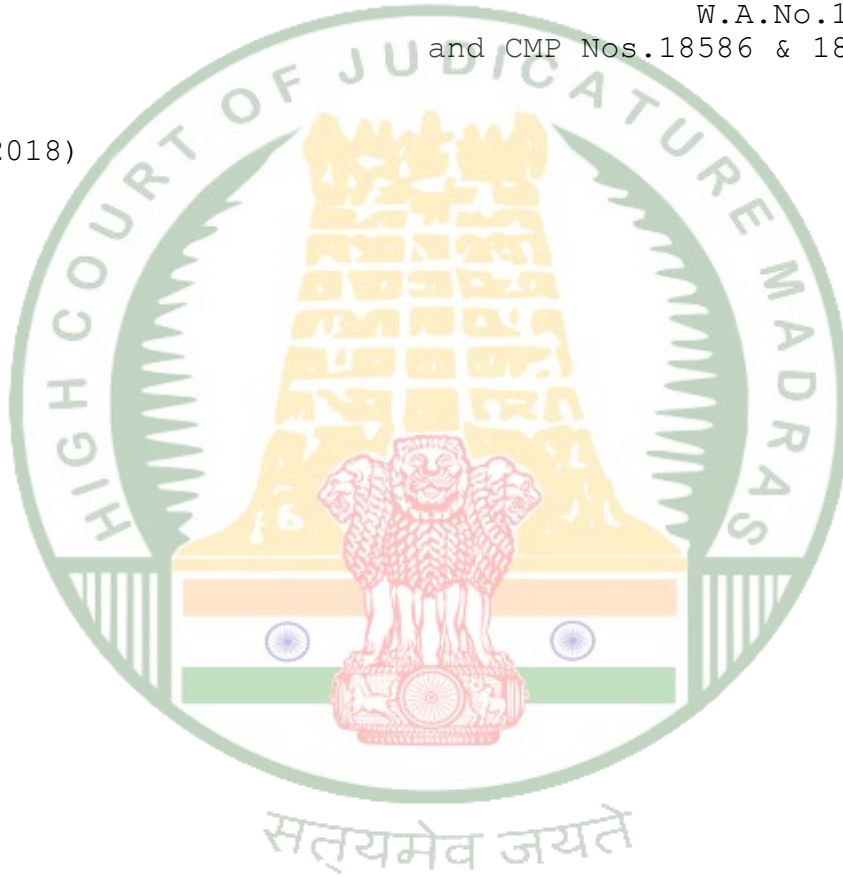
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2. The Regional Deputy,
Commissioner of Corporation,
No.62, Basin Bridge Road,
Chennai.

+1cc to Mr.K.SHAKESPEARE, Advocate, S.R.No.45444
+1cc to Mr.R.ARUNMOZHI, Advocate, S.R.No.46061
+2cc to Mr.R.PARTHASARATHY, Advocate, S.R.No.45625

Judgment in
W.A.No.1507 of 2016
and CMP Nos.18586 & 18587 of 2016

KGK(CO)
TR(24/07/2018)



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