

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.19642 of 2013
and M.P.No.1 of 2013

Mohan Govindadas

..Petitioner

Vs

The Commissioner,
Krishnagiri Municipality,
Kirshnagiri

..Respondent

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the respondent, in Proceedings No.19/F1/2013, dated 13.06.2013, in issuing a notice under Section 218 & 344 of the District Municipalities Act 1920, and quash the same as illegal, incompetent, irregular unwarranted and without jurisdiction.

For Petitioner : Mr.V.Raghavachari
For Respondent : Mr.G.Palani

ORDER

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents and perused the materials available on record.

2. The petitioner challenges the notice issued by the respondent under Section 218 and 344 of the Tamil Nadu Municipalities Act, by which, he was directed to remove the superstructure within a period of seven days.

3. The case of the petitioner is that in a Court auction sale conducted on 19.07.2013, he was declared as successful bidder and purchased the property bearing Door Nos.56A, 57, 58, 59 & 60, corresponding to New Door Nos.343, 344, 345 and 346 on Bangalore Road and a sale deed was registered in his favour on 27.11.1978. The further case of the petitioner is that the building is in a good condition, but the respondent, without providing an opportunity, came to the conclusion that it is in a dilapidated condition and issued the impugned notice.

4. The learned counsel for the petitioner by pointing out the Sections 218 and 344 of the Act submitted that an order under the Sections could be passed only after issuing notice to the petitioner and after arriving subjective satisfaction. But in this case, the impugned order has been passed without following the principles of natural justice.

5. The Section 218 is extracted below for convenience:

"218. Precautions in case of dangerous structures.-

(1) If any structure appears to the executive authority to be in a ruinous state and dangerous to the passer-by or to the occupiers of neighbouring structures, the executive authority 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 executive authority shall himself, before giving such notice or before the period of such 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 344.

(3) If in the opinion of the executive authority, the said structure is imminently dangerous to the inmates thereof, the executive authority shall order the immediate evacuation thereof and any person disobeying may be removed by any police officer."

6. A plain reading of the said Section would show that the order under Section 218 of the Tamil Nadu District Municipalities Act, can be passed only after providing an opportunity to the petitioner. In the case on hand, perusal of records would reveal that no opportunity was given to the petitioner.

7. In view of the above facts, the order impugned in this writ petition is set aside and the matter is remitted back to the respondent for fresh consideration. The respondent shall pass orders afresh in accordance with law after affording ample opportunity to the petitioner and other necessary parties, if any. Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

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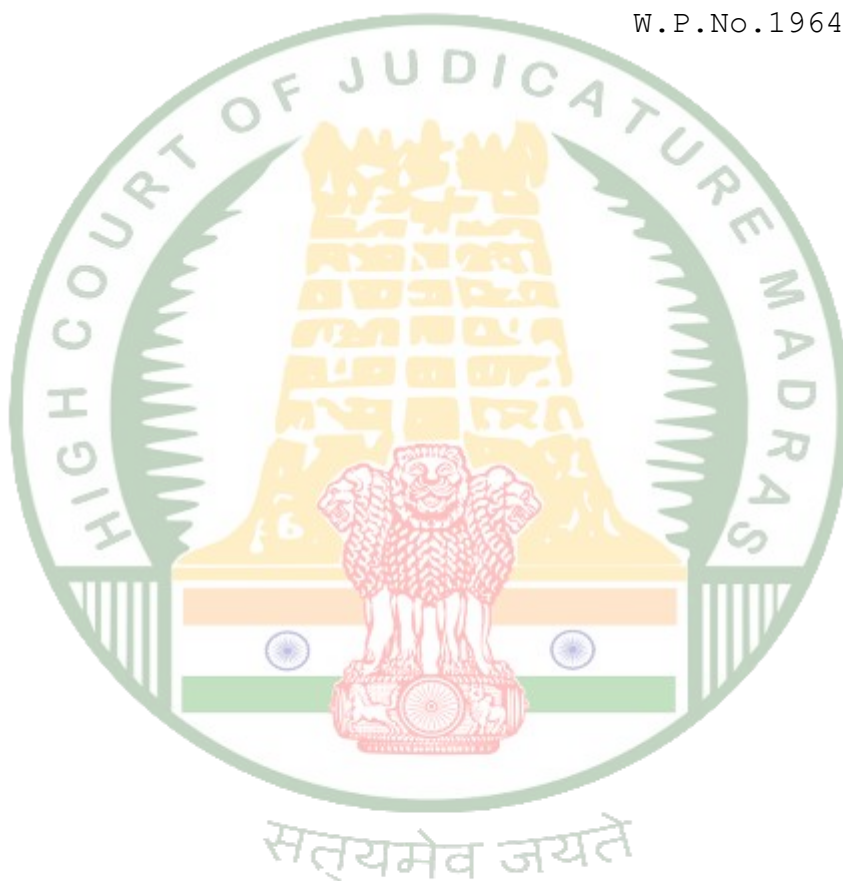
To
The Commissioner,
Krishnagiri Municipality,
Kirshnagiri

+lcc to Mr.V.Raghavachari, Advocate SR.No.45913

SVN (CO)

sm: vk

W.P.No.19642 of 2013



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