IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.25608 of 2017
and
W.M.P.Nos.26998 and 27013 of 2017

M/s.Syndicate Bottles Pvt. Ltd.,
Represented by its Director A.Rahul,
17, E.K.Guru Street,
Periamet, Chennai-600 003. ..Petitioner

Vs.

1. The Commissioner,
   Corporation of Chennai,
   Ripon Building, Chennai.

2. The Executive Engineer,
   Zonal Office-5,
   Greater Chennai Corporation,
   61, Basin Bridge Road,
   Chennai-600 021. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records in Z.O.V/C.No.AEE/U-14/2502/2017, dated 23.05.2017 on the file of the Second Respondent and the consequential demolition notice affixed in the building on 28.08.2017 and quash the same as illegal and irregular.

For Petitioner : Mr.V.Raghavachari
For Respondents: Mr.A.Nagarajan

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ORDER

(The Order of the Court was made by M.Venugopal, J)

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorari to call for the records in Z.O.V/C.No.AEE/U-14/2502/2017, dated 23.05.2017 on the file of the Second Respondent and the consequential demolition notice

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affixed in the building on 28.08.2017 and quash the same as illegal and irregular.

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

3. The Petitioner/Company, incorporated under the Companies Act, 1956, is involved in recycling bottles and that it collects empty glass bottles and cleans them. The Petitioner/Company is the owner of the property measuring 12,105 Sq.Ft., situated at Door No.17, E.K.Guru Street, Periamet, Chennai-3 and it initially belonged to one Abdul Rashid, Mrs.Ayesha Bi, his wife and Mr.Abdul Razaq, his son, who purchased the same on 16.03.1981 by means of Registered Document No.496/81, Document No.309/81, dated 16.03.1981 and Document No.203/93, dated 09.12.1992. The aforesaid persons had mortgaged the property to and in favour of the Park Town Benefit Fund and from the money received from the said Fund, the said Abdul Rashid had put up the present superstructure and he died without repaying the mortgage sum in 1998, leaving behind his wife, seven daughters and three sons. As a matter of fact, a Partition Civil Suit was filed in O.S.No.3121of 2000 by the two daughters of the said Abdul Rashid on the file of the learned 16th Assistant Judge, City Civil Court, Chennai. Indeed, in the said Suit, Mrs.Aiysha Bi (wife of Abdul Rashid), five of her daughters and three sons, had entered into a 'Memorandum of Understanding' with the Park Town Benefit Fund for settlement of the dues.

4. The stand of the petitioner is that the Park Town Benefit Fund had sold the property by way of private sale to 68 Depositors and that the Petitioner had purchased the property, vide different Sale Deeds from 36 of the Depositors. Subsequently, Ayesha Bi passed away. Abdul Razaq (son of the deceased Abdul Rashid) and one Abdul Khader executed a Registered Sale Deeds to and in favour of the Petitioner, dated 17.02.2014 in Document No.390 of 2014 and 09.10.2014 in Document No.2414 of 2014. As on date, the Petitioner owns an area of 5,256 Sq.Ft. of undivided share and 26,575 Sq.Ft. in the built up area of the land and building. The Petitioner, after coming to know that the erstwhile owners/residents had not paid the statutory dues, took steps to make all outstanding statutory payments and paid a sum of Rs.14,35,000/-. Indeed the Petitioner made a request to the Office of the Respondents to change the name in the Statutory Records, as per Letter dated 19.01.2017. However, the Respondents have not submitted any Reply.

5. When that being the fact situation, the Second Respondent issued a Notice, dated 23.05.2017 declaring that the building be in 'old and dangerous' condition. Earlier, based on a complaint, purportedly received by the Respondents, the

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Respondents deputed their Officer to inspect the building on 18.05.2017 and that the Officer thought that the brick work of the building was weak and exposed to open, etc.

6. The primordial plea taken on behalf of the Petitioner is that the Second Respondent/Executive Engineer, Zone-5 of the Greater Chennai Corporation, had acted without issuing notice to the Petitioner and had not taken steps to obtain an Explanation from the Petitioner. In fact, the Second Respondent had acted upon on an anonymous complaint and the said act is a motivated one. Furthermore, the copy of the complaint was never served, despite request was made in that regard. Besides this, the Inspection Report, dated 18.05.2017 was not given to the Petitioner.

7. At this stage, the Learned Counsel for the Petitioner/Company proceeds to point out that the Petitioner had availed of the services of a Civil Engineer/Approved Valuer, who made a detailed inspection of the property in question on four separate dates and on 18.08.2017, he submitted a Report affirming the structural stability of the building.

8. In this connection, the Learned Counsel for the Petitioner/Company emphatically contends that when the Petitioner's Engineer/Approved Valuer's Report, dated 18.08.2017 affirms the structural stability of the superstructure in question, it is curious that in one inspection, without reliance or presenting a Report, the building is termed as a 'dangerous one' by the Second Respondent. Added further, the impugned order/notice dated 23.05.2017 .is an unreasoned one because of the reason that no cogent reasons were furnished that necessitated the demolition of the complete building/superstructure.

9. Learned Counsel for the Petitioner cites a decision of a Division Bench of this Court reported in 2009 (6) CTC 623 (Commissioner, Corporation of Chennai Vs. R.S.Vaideeswaran), whereby and whereunder, it is observed and held that "reasonable opportunity of hearing is to be given and that issuance of Show Cause Notice is not an empty formality". To put it precisely, the Rule of Audi Alteram Partem is to be followed by the authorities concerned before a decision is taken for demolition of the superstructure and that the authorities are not to act in a pre-determined fashion. Also that the Principles of Natural Justice are to be adhered to by the Respondents in true letter and spirit.

10. Countering the submissions of the Learned Counsel for the Petitioner, the Learned Counsel for the Respondent Nos.1 and 2/Corporation of Chennai submitted that on receipt of the

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complaint, the Assistant Executive Engineer, Unit 14 and the Assistant Engineer, Division-58, Unit-14, Zone-5 of the Greater Chennai Corporation, on 18.05.2017, had inspected the building at Door No.17, O.S.Building, E.K.Guru Street, Periamet, Chennai-3 and found that the total extent of building is 9,762 Sq.Ft. consisting of Ground Floor, First Floor, Second Floor, Third Floor and Fourth Floor and there are about 100 Nos. of occupiers residing in the said building, besides that 10 Nos. of shops are in existence in the Ground Floor of the premises. Apart from that, the building seems to be '40 years old' and not maintained properly and the same is in a dilapidated condition, and there was spalling of ceiling and sun-shade and the brick works are very weak and exposed to open.

11. The Learned Counsel appearing for the Respondents brings it to the notice of this Court that after inspecting the site in question, a Show Cause Notice dated 23.05.2017 was issued to the occupiers of the building, wherein a direction was issued to fence off, secure or repair the structure, failing which the building would be locked and sealed by the Greater Chennai Corporation. Since the occupiers had refused to receive the said notice, the notice was affixed on all the shops and residential portion at Door No.17, O.S.Building, E.K.Guru Street, Periamet, Chennai-3.

12. In the interregnum, the Executive Engineer of the TANGEDCO had addressed a Letter, dated 03.08.2017 to the owner of the building (with a copy being marked to the Greater Chennai Corporation) stating that the building in question is in a dilapidated condition and if any portion of the building collapses, there is a risk of occurring major fire accident.

13. The Learned Counsel appearing for the Respondents proceeds to point out that E.K.Guru Street is a 5 meter width narrow Street and if any accident occurs due to the negligence of the owner, many lives would be put to danger and there will be difficulty in rescuing the occupants and the road-goer's life also will be jeopardised. Continuing further, the building in question is adjacent to the Government Veterinary College Boys Hostel and if any accident occurs, the college students will also be affected.

14. Be it noted that Section 258 of the Chennai City Municipal Corporations Act, 1919 speaks of "precautions in case of dangerous structures" and the same runs as under:

> "Section 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

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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."

15. Furthermore, Section 387 of the Act, 1919 enjoins "recovery of sum due as taxes".

16. A cursory reading of the ingredients of Section 258 of the Act, 1919 latently and patently indicates the power of the Commissioner of Corporation of Chennai to take immediate action, if he opines that the same is necessary and also that a notice may be given by him to the owner/occupier concerned in respect of the structure which is imminently danger to the inmates thereof. Furthermore, the said Section 258 confers power on the Commissioner of the First Respondent/Corporation of Chennai to order an immediate evacuation thereof and if any person disobeys the order of the Commissioner of the Corporation of Chennai, he may be removed by any Police Officer.

17. Even though a plea is taken on behalf of the Petitioner that no notice was served on him prior to the issuance of the impugned order/notice, dated 23.05.2017, this fact is being disputed by the Respondents on the ground that the Show Cause Notice, dated 23.05.2017 was issued to the occupiers of the building to fence off, secure or repair the structure. Furthermore, since the occupiers have refused to receive the notice, the said notice was affixed on all the shops and residential portion in question.

18. Be that as it may. In view of the fact that the Petitioner has come out with a plea that his Engineer/Approved Valuer, after inspection of the building in question, had

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submitted a report, dated 18.08.2017, wherein the sanctity of the entire superstructure should be upheld and corrective measures taken and not in stability and that the superstructure overall in terms of structural stability is safe beyond qualm and question, the Petitioner is directed to submit a copy of his Engineer/Approved Valuer's Report, dated 18.08.2017 to the Second Respondent/Executive Engineer, Zonal Office-5, Greater Chennai Corporation, within two weeks from the date of receipt of a copy of this order.

19. Thereafter, the Second Respondent/Executive Engineer, Zonal Office-5, Greater Chennai Corporation, after looking into the Report of the Petitioner's Engineer/Approved Valuer, dated 18.08.2017, in case he is advised, can inspect the building in question, either by himself or through responsible Officer of the Greater Chennai Corporation and to obtain a suitable report in regard to the Petitioner's subject property's superstructure and structural stability. Soon after obtaining the report of the Officer of the Greater Chennai Corporation, the Respondents 1 and 2 shall provide a copy of the same to the Petitioner.

20. Thereafter, the Second Respondent/Executive Engineer, Zonal-5, Greater Chennai Corporation, Chennai-21, is to take a final decision/final call in the subject matter in issue after providing an adequate opportunity of personal hearing to the Petitioner through its representatives, if any or the Learned Counsel as it so desires/advised and the Petitioner/Company is to avail of the said opportunity. It is open for the Petitioner/Company to present their views through its official or authorised representative before the Second Respondent and it is open for the Petitioner/Company to raise all factual and legal issues touching upon the subject matter before the Second Respondent/Executive Engineer, Zonal Office-5, Greater Chennai Corporation, Chennai-21.

21. It cannot be gain-said that the Second Respondent/Executive Engineer of Zone-5 of the Greater Chennai Corporation shall take into consideration all the facts and legal pleas raised by the Petitioner and to advert the same by meeting out the points raised, in a qualitative and quantitative manner and to pass a reasoned speaking order, after applying his mind. It is open for the Petitioner/Company to produce any other supporting documents in regard to the structural stability of the subject property and the sanctity of the entire superstructure, as the case may be. The Second Respondent shall issue prior notice to the Petitioner/Company specifying the date and time at which the Petitioner/Company or its representative (s) is to appear for the personal hearing/enquiry and to pass final orders in question within a period of four weeks thereafter. In this regard, the Respondents 1 and 2 shall follow

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the aforesaid Principles laid down by this Court in the decision reported in 2009 (6) CTC 623 (cited supra).

22. With the aforesaid observations and directions, the Writ Petition is disposed of. No costs. Consequently, W.M.Ps. are closed.

cs

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To
1. The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai.

2. The Executive Engineer,
Zonal Office-5,
Greater Chennai Corporation,
61, Basin Bridge Road,
Chennai-600 021.

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