



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DELIVERED ON : 23.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P(MD)No.17702 of 2018

and

W.M.P(MD)No.15589 of 2018

AND

Contempt Petition(MD)No.1171 of 2018

and

Sub Application (MD)No.186 of 2018

W.P(MD)No.17702 of 2018:

NPS Nisha

... Petitioner

Vs.

1.The Commissioner,
Nagercoil Municipality,
Nagercoil.

2.Kebin Joy,
The Inspector of Town Planning,
Nagercoil Municipality,
Nagercoil.

3.Sheik Eliyas

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Mandamus to direct the respondents to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation for demolishment of building illegally in Door No.76D, Parakkai Road, Nagercoil and consequently, direct them not to disturb the peaceful possession of the above said property without following due procedure of law.

For Petitioner : Mr.RM.Arun Swaminathan

For Respondents : Mr.P.Athimoolapandian for R.1

Mr.M.Dennis Joe for R.3

* * * * *

Contempt Petition (MD)No.1171 of 2018:

NPS Nisha

<https://hcservices.ecourts.gov.in/hcservices/>

... Petitioner/
3rd Party

Vs.



1.Saravana Kumar,
The Commissioner,
Nagercoil Municipality,
Nagercoil.

2.Kebin Joy,
The Inspector of Town Planning,
Nagercoil Municipality,
Nagercoil.

... Respondents

PRAYER: Petition filed under Section 11 of the Contempt of Courts Act, to punish the contemnors/respondents for their wilful disobedience of the order of this Court passed in W.P(MD)No.3625 of 2018, dated 22.02.2018.

Prayer in WP(MD). 3625/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records of the proceedings by the 2nd respondent in No.Na.Ka.B1/7494/2017 dated 06/11/2017, quash the same and consequently directing the respondents not to disturb the peaceful possession of the above said property without following the procedure of law.

For Petitioner : Mr.RM.Arun Swaminathan

For Respondents : Mr.P.Athimoolapandian for R.1

* * * * *

COMMON ORDER

R.SUBBIAH,J.

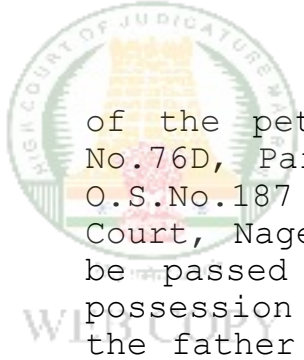
W.P(MD)No.17702 of 2018 has been filed seeking a writ of Mandamus to direct the respondents to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation for the illegal demolishment of building in Door No.76D, Parakkai Road, Nagercoil and consequently, direct them not to disturb the peaceful possession of the above said property without following due procedure of law.

2. Contempt Petition(MD)No.1171 of 2018 has been filed seeking to punish the contemnors/respondents for their wilful disobedience of the order of this Court passed in W.P(MD)No.3625 of 2018, dated 22.02.2018.

3. Since the issue involved in the writ petition and the contempt petition is one and the same, they are disposed of by way of this common order.

4. Facts leading to filing of the present Writ Petition as well as contempt petition, briefly narrated, are as under:

4.1. One S.Seiyyad Mohammed Sulaiman @ S.S.M.Sulaiman - husband



of the petitioner herein, is running a welding workshop in Door No.76D, Parakkai Road, Nagercoil - 2 and he filed a civil suit in O.S.No.187 of 2014 on the file of the Principal District Munsif Court, Nagercoil, against his brother and an exparte decree came to be passed in his favour and on filing E.P.No.47 of 2015, the possession of the said property was handed over to him. While so, the father of said S.S.M.Sulaiman filed E.A.No.16 of 2016, however, the same was dismissed. Thereafter, instead of following due process of law, he filed a complaint that the said S.S.M.Sulaiman is running his welding workshop in a poramboke land. Subsequently, the Tahsildar, Agastheeswaram Taluk, Nagercoil, initiated eviction proceedings and issued notice dated 06.11.2017 calling upon him to evict the property in question. Aggrieved thereby, he filed W.P(MD) No.3625 of 2018 before this Court and this Court, by order dated 22.02.2018, has observed as under:

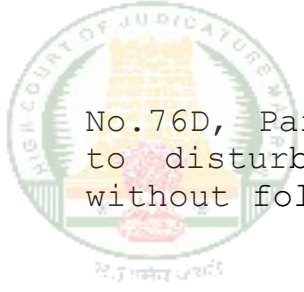
"5. In the background of these facts, the petitioner is now aggrieved by the impugned communication, because his father has given a petition to the second respondent dated 21.06.2017. As pointed out earlier, the impugned proceedings is only an internal communication between the second and third respondent. Therefore, it goes without saying that even assuming that there is an encroachment, the third respondent cannot straight away take action without following due procedure established by law.

6. Therefore, we dispose of this writ petition with an observation that the respondent, if they intend to proceed further in the matter, should do so after notice to the petitioner and after following the procedure under the relevant Statute.

7. The learned counsel for the 3rd respondent, on instructions, would submit that the Municipality will proceed only after issuing notice. Therefore, the petitioner need not have any apprehension that he will be dispossessed without following proper procedure. No costs. Consequently, connected miscellaneous petitions are closed."

4.2. Alleging disobedience of the aforesaid order, the wife of the said S.S.M.Sulaiman, has come forward with the contempt petition in Contempt Petition(MD)No.1171 of 2018.

4.3. Further, it is alleged that despite the order passed by this Court in W.P(MD)No.3625 of 2018, dated 22.02.2018, the respondents without giving any notice to the petitioner and without following due process of law, trespassed into the property in question and disconnected the electricity service connection and demolished the shop/building and took away the properties belonging to the petitioner. Hence, the petitioner herein, namely, the wife of the said S.S.M.Sulaiman, has filed the writ petition in W.P(MD) No.17702 of 2018, seeking a writ of Mandamus to direct the respondents to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation for demolishment of building illegally in Door



No.76D, Parakkai Road, Nagercoil and consequently, direct them not to disturb the peaceful possession of the above said property without following due procedure of law.

5. When the matters are taken up for hearing, the learned Standing Counsel appearing for the first respondent, reiterating the averments in the counter affidavit filed by the first respondent, submitted that it is incorrect to state that without following due process of law, the eviction proceedings were initiated by the first respondent and only as per the procedures contemplated under the statute, the encroachment made by the petitioner was removed and absolutely, there is no violation of the orders passed by this Court.

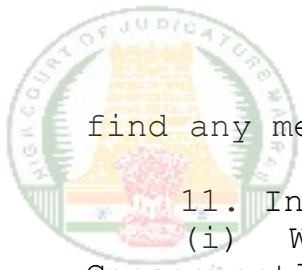
6. He further submitted that the first respondent has taken effective steps to serve notice on the petitioner both in her residence as well as in the property in question, but the doors were found locked and hence, having no other alternative, they pasted the eviction notice on the doors of the residence of the petitioner and thus, they have followed the orders passed by this Court in true letter and spirit.

7. Heard the learned Counsel for the parties and perused the materials available on record.

8. The main grievance of the petitioner is that without following the relevant provisions of the statute, the first respondent in a high-handed manner demolished the building in question and that too, without giving any notice to the petitioner.

9. However, we find that the earlier writ petition in W.P(MD) No.3625 of 2018 has been filed by the husband of the petitioner herein, but he has not chosen to file the contempt petition in Contempt Petition(MD)No.1171 of 2018 and moreover, the petitioner herein has no explanation to offer as to why she has filed the present contempt petition. Therefore, we have no hesitation to hold that the contempt petition is liable to be rejected on that ground alone.

10. Insofar as the claim of the petitioner for payment of Rs.5,00,000/- (Rupees Five Lakhs only) towards compensation for the illegal demolition of the building in question, we are of the considered view that no case has been made out by the petitioner to show that the orders passed by this Court in W.P(MD)No.3625 of 2018, dated 22.02.2018, have not been complied with by the first respondent. Further, we find that the eviction proceedings have been initiated by the first respondent in accordance with the relevant provisions of law and only after their attempts to serve notice on the petitioner went in vain, they pasted the same on the doors of the residence of the petitioner. Moreover, this Court cannot conduct a roving enquiry into the disputed question of facts and we do not



find any merit in the writ petition filed by the petitioner.

11. In the result,

(i) W.P(MD)No.17702 of 2018 stands dismissed. No costs. Consequently, the connected writ miscellaneous petition is also dismissed; and

(ii) Contempt Petition(MD)No.1171 of 2018 is dismissed. Consequently, the connected sub-application is also dismissed.

Sd/

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar(CS-III)

TO

1.THE COMMISSIONER,
NAGERCOIL MUNICIPALITY,
NAGERCOIL.

2.THE INSPECTOR OF TOWN PLANNING,
NAGERCOIL MUNICIPALITY,
NAGERCOIL.

+1cc to Mr.M.Dennis Joe, Advocate, SR.No.96655

W.P (MD) No.17702 of 2018

and

W.M.P (MD) No.15589 of 2018

AND

Contempt Petition (MD) No.1171 of 2018

and

Sub Application (MD) No.186 of 2018

rsb

KK/PM/SAR-3/06.12.2018/5P-4C