



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 16.11.2018

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P (MD) No.22894 of 2018
and
W.M.P (MD) No.20780 of 2018

Manimegalai

.. Petitioner

Vs

1. The Commissioner,
Pudukkottai Municipality,
Pudukkottai.
2. The Inspector of Police,
Pudukkottai Town Police Station,
Pudukkottai.

3. Dr.Saleem

.. Respondents

Prayer: Writ Petition 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 impugned order dated 13.11.2018 passed by the first respondent and to quash the same and consequently to direct the respondents 1 and 2 not to interfere in the civil dispute of the property in T.S.No.3607/25 at Sathiyamoorthy Road, Pudukkottai Town.

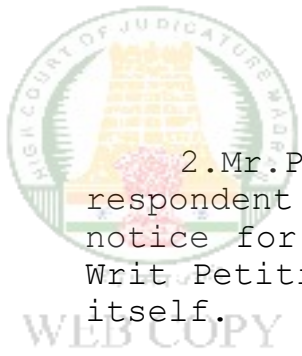
For Petitioner : Mr.D.Ramesh Kumar

For Respondent-2 : Mr.Bagavathy
Government Advocate

For respondent-1 : Mr.P.Mahendran

ORDER

The Petitioner has prayed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order, dated 13.11.2018 passed by the first respondent and consequently to direct the respondents 1 and 2 not to interfere in the civil dispute of the property in T.S.No.3607/25 at Sathiyamoorthy Road, Pudukkottai Town.

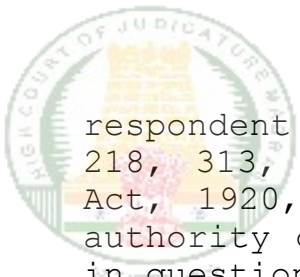


2.Mr.P.Mahendran, learned counsel takes notice for the first respondent and Mr.B.Bagavathy, learned Government Advocate, takes notice for the second respondent. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

3.The case of the Petitioner is that she and her partners are running a hotel under the name and style of ''Hotel Impala'' at Sathiyamoorthy Road, Pudukkottai Town in S.No.3607/25.The Petitioner would further submit that the third respondent Dr.Saleem is the owner of the said property. The Petitioner would submit that the third respondent in order to grab more money from them, refused to receive the rent and compelled them to vacate from the said premises without any reasonable grounds. Hence they were constrained to approach the learned District Munsif Court(Rent control Tribunal) in R.C.O.P.No.8 of 2011 for the relief to deposit the rent before the Tribunal and the same was dismissed. Aggrieved against the said order, the Petitioner had preferred an appeal in R.C.A.No.7 of 2015 before the Rent Control Appellate Tribunal, Pudukkottai. The third respondent also filed a petition before the District Munsif (Rent Control Tribunal) in R.C.O.P.No.2 of 2017 and the same was allowed. Aggrieved over the said order the Petitioner preferred an appeal in R.C.A.No.2 of 2017 before the Rent Control Appellate Tribunal, which is pending.

4.During the festival of Deepavali, the Hotel was closed since the employees had went to their native place from 12.11.2018 to 14.11.2018 and at that time, the third respondent being an influential person colluded with the first and second respondents and locked and sealed the hotel stating that the hotel is under dilapidated condition and affixed the impugned order, dated 13.11.2018. No personal opportunity of hearing was given and no notice was issued to offer their explanation. They were not granted time to offer their explanation that whether the building is in dilapidated condition or not and on whose intervention, the first respondent has passed the impugned order is not known, that too, it is a non speaking order. Moreover, the second respondent Police also threatened the workers and staff members of the hotel. Having no other alternative remedy, the Petitioner has approached this Court, by way of filing the present Writ Petition.

5.The Petitioner would further submit that as per Section 133 of Cr.P.c., the District Magistrates or the Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf, on receiving report of a Police Officer or other information and on taking such evidence if any, as he thinks fit, can pass an order as per the above Section to remove the said building , which is likely to fall and thereby causing injury to the person living there or carrying on business in the neighbourhood. hence the respondents 1 and 2 have no jurisdiction to lock and seal the Petitioner's premises, which is against law. The first

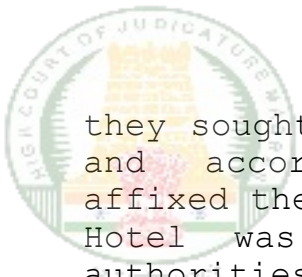


respondent has passed the present impugned order as per Sections 218, 313, 339 and 340 of the Tamil Nadu District Municipalities Act, 1920, but the said provisions does not confer any right or authority on the respondents 1 and 2 to lock and seal the premises in question, which is nothing but a clear abuse of process of law.

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6.Mr.P.Mahendran, learned counsel appearing for the first respondent on notice would submit that the Petitioner building is in a dilapidated condition and only to safeguard the interest of the general public, the said order has been passed. The learned counsel would further contend that the hotel is situated at New Bus stand Pudukkottai from where in busy hours people from various destinations travel and always there is a huge crowd in and around the bus stand. The contention of the learned counsel for the Petitioner submits that no notice was issued to him and the said fact has been denied by the learned counsel for the first respondent stating that the the first respondent is the person who has leased the said property to one Dr.Saleem/the third respondent herein and originally, notice was issued to the lessee Dr.Saleem on 12.09.2017 which was received by him in person on 10.10.2017 and he also sent reply by RPAD to the Commissioner of Municipality, dated 12.9.2017. In the said reply, Dr.Saleem had admitted that the said building was leased out to one Abul Ajiz and the said Abdul Ajiz without informing him, has sub-leased the said premises to one Bharanikumar and Manimegalai.

7.Admittedly, the third respondent has filed R.C.O.P.No.2 of 2011 before the Distrit Munsif(Rent Control Tribunal) and the same has been allowed in favour of the third respondent and inspite of eviction order passed by the Court from the said premises, the Petitioner has filed an appeal in R.C.A.No.2 of 2017 before the Sub-Court(Rental Control Appellate Tribunal), Pudukkottai and the same is pending. He would also further submit that when the said Court passes an order of eviction, the third respondent would take possession of the same and accordingly as per notice, he will either repair it or renovate it. He undertakes to do repair works as per the orders and till date the first respondent had not taken any action on the said notice, dated 12.9.2017. On 7.11.2018, again other notice was issued by the Municipality to the third respondent/Dr.Saleem as well as to Abdul Ajiz stating that Hotel Imala has been damaged very badly and it is not fit to be used by any person. Hence the position of the said building is in a very dangerous condition and on 12.11.2018, there is a requisition by the Commissioner to the Inspector of Police, Town Police Station in proceedings No.F3/14299/2013, dated 12.11.2018,that to take action as per Section Section 218, 313, 339, 340 and 344 of the Tamil Nadu District Municipalities Act. The third respondent was issued with notice on 12.9.2017 and 7.11.2018 and inspite of the said notices, the third respondent has not taken any steps to evict the Petitioner and hand over the said building, hence, as per the powers granted by the Tamil Nadu District Municipalities Act, the authorities are going to lock and seal the premises on 13.11.2018 at 3.00 p.m and



they sought necessary police protection from the Police Department and accordingly, the Police had cooperated while the officials affixed the said notice in the premises of the said hotel. Since the Hotel was locked, there was an affixure effected by the authorities.

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8. Based on the above sections and the powers granted to the Municipality, and **as per Section 218 of the Tamil Nadu District Municipalities Act, 1920** '**whether any structure appears to be in a ruinous state and dangerous to the passers 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.** 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 cost of doing so shall be recoverable from the owner or occupier in the manner provided in Section 344. 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.'

9. Accordingly, when the original lessee has been given proper notice for removing the said structure, there was no action taken by the lessee stating that civil petitions are pending in R.C.O.P and that is only regarding eviction and fixation of fair rent and that is got nothing to do with the present impugned order. The present impugned order is only to lock and seal the premises, which is in a dilapidated condition. Photos produced by the authorities before this Court would clearly show that there are damages to the property which is in dilapidated condition and the adjacent shop owners have vacated the premises and only this Petitioner's hotel alone is functioning and on seeing the photographs, it could be seen that there is an immediate danger to the persons who ever uses the premises and any time it may collapse as the iron rods are seen and the plaster has fallen down. and hence the authorities on their own has passed this order as per law and the Petitioner being the sub-lessee cannot claim any right that he should be given a notice, because the original lessee and sub-lessee has been given proper notices and when there is a clear finding given by the authorities that the building has to be locked and sealed forbearing anybody from using it in order to safeguard the life of general public, this Court is of the view that the order passed by the first respondent needs no interference. Accordingly, this Court finds no merit in the Writ Petition and the impugned order needs no interference by this Court.



10. In fine, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Commissioner,
Pudukkottai Municipality,
Pudukkottai.
2. The Inspector of Police,
Pudukkottai Town Police Station,
Pudukkottai.

+ 1 CC TO Mr.P.MAHENDRAN, ADVOCATE IN SR No. 95891
+ 1 CC TO Mr.D.RAMESH KUMAR, ADVOCATE IN SR No. 95853
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 95797

VSN

TE/SV/SAR-4 : 28/11/2018 : 5P/6C

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16.11.2018