



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
and
THE HONOURABLE MRS. JUSTICE R. HEMALATHA

W.A(MD) No. 347 of 2011
and
M.P(MD) Nos. 1 and 2 of 2011

Kodaikanal Varthagarhal Sangam,
(Kodaikanal Traders Society)
Rep. By its Secretary,
having office at Head Post Office Road,
Kodaikanal - 624 101.

... Appellant/Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St. George, Chennai - 600 009.

2. The Commissioner,
Kodaikanal Municipality,
Kodaikanal.

3. The Municipal Council,
Rep. by its Chairman,
Kodaikanal Municipality,
Kodaikanal.

... Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent,
against the order dated 28.01.2011 passed in W.P(MD) No. 1231 of 2010
on the file of this Court.

Prayer in WP(MD). 1231/ 2010 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a WRIT OF
CERTIORARI FIED MANDAMUS calling for the records pertaining to the
Resolution dated 25.01.2010 on the file of the 3rd respondent,
resolving to demolish the Municipal Complex in Anna Salai,
Kodaikanal where the petitioners are carrying their business, and
quash the same and consequently forbear the 2nd respondent from
taking any steps to vacate the members of the petitioner sangam from
their respective shops.



For Appellant

: Mr.S.Karthik

For R-1 & R-3

: Mr.A.Muthukaruppan

Additional Government Pleader

For R-2

: Mr.T.S.Mohammed Mohideen

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JUDGMENT

(Judgment of the Court was delivered by
M.SATHYANARAYANAN, J.)

The appellant Sangam is the Writ Petitioner in W.P(MD)No.1231 of 2010 and it made a challenge to the resolution dated 25.01.2010 passed by the Municipal Council, Represented by its Chairman, Kodaikanal Municipality, Kodaikanal, resolving to demolish the Municipal Complex situated in Anna Salai, Kodaikanal, where the members of the appellant Sangam are carrying on business and to quash the same and consequently, forbear the Kodaikanal Municipality from taking any steps to evict the members of the appellant Sangam from their respective shops.

2. The Writ Petition after contest, came to be dismissed vide impugned order dated 28.01.2011 and challenging the legality of the same, the present Writ Appeal has been filed and it was entertained and interim orders were granted.

3. The Writ Appeal was listed for hearing on 17.01.2018 and on that day, the learned counsel appearing for the appellant Sangam undertook to furnish a list of particulars containing names of their members, shop numbers along with Aadhar Cards in the form of additional affidavit with supporting documents. Accordingly, the following persons have filed the affidavits:

Sl. No.	Name
1.	S.Velusamy, S/o.Subbiah
2.	V.Duraisamy, S/o.Vellaisamy
3.	G.Inbaraj, S/o.Gnanathiraviyam
4.	N.Mohammed
5.	N.E.Abdul Rahim, S/o.Rasool Rowathar
6.	M.Abdul Azeez, S/o.Mohideen
7.	P.N.Joel, S/o.Nagamani Joel
8.	M.S.Murugesan, S/o.Subbiah Pillai
9.	P.Abbas, S/o.late.Pakeer Mohamed
10.	S.Velusamy, S/o.Subbiah

4. Since only ten persons claims to be in possession in certain shops, this Court has taken that they are only the members of the appellant Sangam.



5. It is also pertinent to point out at this juncture that though at the time of filing the Writ Petition, the petitioner Sangam is required to furnish the list of members with relevant particulars, admittedly, it was not done and though an opportunity was given to the appellant Sangam to furnish the list of members with relevant particulars along with Aadhar Cards, only ten persons alone have filed the affidavits. Therefore, this Court has taken that they are only the members of the appellant Sangam.

6. The learned counsel appearing for the appellant Sangam would submit that the members of the appellant Sangam are in possession of the said shops for the time immemorial and attempts are being made to dispossess them without recourse to due process of law and though they are ready to pay the licence amount and also sent Demand Draft and the same has been refused to be received by the Kodaikanal Municipality and therefore, prays for appropriate orders protecting their interest and would further add that in the event of the shops being demolished, they will be dispossessed without any alternate accommodation and prays for interference.

7. Per contra, Mr.T.S.Mohammed Mohideen, learned Standing Counsel appearing for the Kodaikanal Municipality, has invited the attention of this Court to the affidavit of the second respondent, dated 03.03.2018 and would submit that the members of the appellant Sangam are not paying the dues to the Municipality on time and in order to squat over the property without paying the dues, various litigations are filed before the Jurisdictional Munsif Court, Sub-Court as well as before this Court and on account of non-collection of dues, the local-body is suffering very much and would further add that, very many shops are being sub-leased for hectic sum and even then, the concerned licensees are not prepared to pay the licence amount and thereby, there is huge arrears of licence amount and he has drawn the attention of this Court to the Tabular Column annexed to the said affidavit.

8. The appellant Sangam has also filed a reply affidavit to the counter-affidavit filed by the second respondent stating that the buildings are not in dilapidated condition and it is only a reason to evict them and would further add that in Kodaikanal Municipality, there are several buildings more than 100 years old and no steps are being taken to demolish the same and also a Tabular Column is also annexed as to the arrears of licence amount payable.

9. A perusal of the Tabular Column annexed in the reply affidavit filed by the appellant Sangam, would disclose that Mr.M.N.Pakker Mohammed (Shop No.3), is in arrears of Rs.1,18,925/-, Mr.K.P.M.Abdul Ajees and Mr.R.K.Jamal Mohammed (Shopt No.9), are in arrears of Rs.95,560/-, Mr.P.N.Joel Nazar (Shop No.12), is in arrears of Rs.47,085/-, Mr.S.Velusamy (Shop No.16), is in arrears of Rs.93,510/- and Mr.M.S.Murugesan (Shop No.17), who is the deponent of the reply affidavit, is in arrears of Rs.60,567/- and the only explanation offered by the learned counsel appearing for the appellant Sangam is that though their members are ready to tender the amount, the amount has been refused to be received by the Kodaikanal Municipality.



10. The affidavit of the second respondent, dated 03.03.2018, contains a Tabular Column and a perusal of the same, paints a very sorry picture for the reason that the licensees of the shops in question have not only sub-leased the same, but also they are in arrears of licence amount to the tune of lakhs and lakhs of rupees and the total arrears is to the tune of Rs.1,36,15,012/-.

11. The only objection raised by the appellant Sangam is that the shops in question are not in dilapidated condition and that, there are very many buildings in Kodaikanal Municipality there are several buildings more than 100 years old and the Municipality do not require the said buildings and do not require demolition.

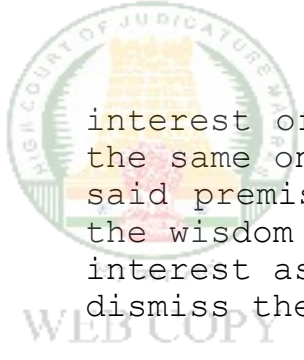
12. The Municipal Administration and Water Supply Department in G.O.(2D)No.222, dated 26.11.2007, permits the auction of the vacant site also, with the rider that the building can be later constructed, out of the auction proceeds and as such, it is always open to the Municipality to go for demolition of the building for economic betterment.

13. It is the specific case of the Kodaikanal Municipality that the buildings in which the shops are located are in dilapidated condition and that part, the licensees have let out the shops in favour of third parties and though they are earning huge sum by way of revenue, did not pay the arrears of licence amount on time.

14. The only explanation offered by the learned counsel appearing for the appellant is that there are very many buildings belong to Kodaikanal Municipality are in dilapidated condition and no steps are being taken to demolish the same and in the considered opinion of this Court, the same cannot be considered as a good and satisfactory explanation for the reason that the local-body namely, the Kodaikanal Municipality being the owner of the premises is entitled to go for demolition even for economic betterment in terms of the above said Government Order dated 26.11.2007 and taking into consideration the fact that the buildings are in dilapidated condition and in the event of falling down, they have to face criminal prosecution and other liability and they are entitled to do so.

15. The learned Judge has also taken note of the fact that the earlier Writ Petition filed by the appellant Sangam in W.P(MD)No.11425 of 2009, for the very same reason, was allowed to be withdrawn to work out their remedy by individuals and without doing so, the very same Sangam has filed the present Writ Petition, challenging the municipal resolution.

16. The learned Judge further held that in the light of the resolution passed by the local-body namely Kodaikanal Municipality as to the requirement of demolition and reconstruction in the



interest of general public and tourists, the Court cannot forestall the same only because the petitioner Sangam wants to continue in the said premises and further observed that the Court cannot go behind the wisdom of the resolution that too in a petition filed in private interest as projected by the petitioner Sangam and thought it fit to dismiss the Writ Petition.

17. This Court on an independent application of mind with the entire materials placed before it and also in the light of the reasons assigned above, is the considered view that there is no error apparent on the face of the record or infirmity in the reasons assigned by the learned Judge for dismissing the Writ Petition and finds no merits in the Writ Appeal.

18. In the result, the Writ Appeal is dismissed confirming the order dated 28.01.2011 passed in W.P(MD)No.1231 of 2010. No Costs. Consequently, connected Civil Miscellaneous Petition, are closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

1.The Secretary to Government,
State of Tamil Nadu,
Municipal Administration & Water Supply Department,
Fort St. George,
Chennai - 600 009.

2.The Municipal Council,
Kodaikanal Municipality,
Kodaikanal.

3.The Executive Officer/ Commissioner,
Kodaikanal Municipality,
Kodaikanal, Dindigul District.

+One cc to The Special Government Pleader, SR.No.56231
+One cc to M/s.S.Karthik, Advocate, SR.No.55938
+One cc to M/s.T.S.Mohammed Mohideen, Advocate, SR.No.55805

pm

RL/7C/5P/CVC/SAR1/2/4/2018

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