

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 01.08.2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.16269 of 2017

C.Natarajan

... Petitioner

Vs.

1.The Commissioner,
Chennai Corporation,
Rippon Building, Chennai 600003.

2.The Assistant Commissioner,
Zone V, Chennai Corporation,
Chennai.

3.The Executive Engineer,
Chennai Corporation,
Zone V, Chennai.

4.R.Kumudha

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the Respondents to take necessary action to demolish the dangerous building situated in Old Door No.7/4 and New Door No.9/5, Aavathanam Pappayya Road, Choolai, Taluk - 58, Zone - 5, Chennai District - 600112 by consider the representation of the petitioner dated 22.12.2016.

For petitioner... Mr.P.Rajavel

For R1 to R3 .. Mr.K.Soundararajan,
Standing Counsel for Corporation.

ORDER

(Order of the Court was made by S.MANIKUMAR,J)

Claiming himself to be a social activist, Mr.C.Natarajan has filed the instant writ petition for a Writ of Mandamus, directing the respondents, to take necessary action to demolish a building situated in Old Door No.7/4 and New Door No.9/5, Aavathanam Pappayya Road, Choolai, Taluk - 58, Zone - 5, Chennai, by considering the representation of the petitioner, dated 22.12.2016.

2. In the supporting affidavit petitioner has contended that during the month of December, 2016, whole of the coastal areas in Tamil Nadu, which includes Chennai City, faced one of the worst ever Cyclone (Vardah Cyclone) in its history and was gravely affected. Most of the thatched huts, several buildings and temporary structures, in and around the city, were damaged. Several thousand of trees, in Chennai City, were uprooted and Mobile Towers, electrical poles, etc., in the city, were abruptly disrupted / disconnected and the daily life came to a grinding halt. Under these circumstances, Petitioner being a social activist involved himself in helping the poor and needy people in the society, by coordinating with the people belonging to the association and other likeminded persons to extend relief to the areas affected by the Cyclone.

3. Petitioner has further contended that along with other members, he participated in cleaning activities, across the city by removing debris and cutting down/removing the fallen trees, from the road and thereby clearing the traffic and further to get rid of the overall traffic chaos faced by the commuters throughout the cyclone period. The Petitioner has also extended the same help for the people residing in Purasaiwakkam area, which was also affected, during cyclone.

4. Petitioner has further contended that during the clean-up activity, he came across a very old Two Storeyed building at Avadana Pappier Road, Choolai, Chennai, which is said to be 8 decades old building. The said building is in a dilapidated condition and affected by the violent storm. Condition of the building, is such that it appeared to fall at any time. After enquiry, petitioner came to know that, the said building belongs to one Mrs.R.Kumutha, W/o Mr.P.Rajendran, residing at Old.No.7/4, New No. 9/5 Avadana Pappier Road, Choolaimedu, Chennai. According to the petitioner, the building has no planning approval or licence, from the Corporation Authorities. He further contended that on further enquiry, it was found that, the building was leased out, to certain tenants, viz., Dr. Ashok Kumar, who is running a medical clinic and one Mr.Vittal Rao, running a tailor shop, both in the ground floor. It is also reliably understood that, rent control/eviction proceedings, are pending regarding the abovesaid building.

5. Petitioner has further contended that the building is situated on the main road, in a heavily crowded area, with more number of people moving in front of the building. Moreso, the said building is situated right next to a school and if the building collapses, there is an imminent threat that the building could fall either on the school building or on the main road, either way, causing serious harm to the students and public. Every day, children from the school, after the school hours, are seen standing, in front of the building. Also, two

wheelers are seen regularly parked in front of the building. With the said building being so structurally weak, it poses a serious threat to the students and general public, who use the main road. A mere look at the building would show dilapidate condition and it could collapse any moment.

6. Petitioner has further contended that taking into consideration the serious state of affairs, petitioner has sent a representation, dated 22.12.2016, to the respondents, to take appropriate steps. In the representation, the petitioner has also referred to the article in Daily Dina Thanti dated 17.12.2016, wherein it was stated that the Corporation had issued notices run down old buildings and directing the persons responsible, to take steps, to remedy the same. The article also stated that the authorities have directed the persons residing, in such weak buildings to be evicted, if necessary, with the help of police, for their own safety. Owners of such weak buildings, were also required to take a stability certificate which has also not been done herein. The authorities were also directed to take action against the buildings, which are built without the approval or permission. Despite the same, no steps are taken by the authorities till date. Under these circumstances, petitioner has filed the instant writ petition, for the prayer, as stated supra.

7. Representation of the petitioner, dated 22.12.2016, sent to the Executive Engineer, Chennai Corporation, Zone-5, Chennai, to demolish the abovesaid building, which reads thus:-

Date:22.12.2016

To
The Executive Engineer,
Chennai Corporation,
Zone-5, Chennai.

Sir,

Sub: to demolish the old building is more than 80 years old and constructed the building without getting permission from corporation vide situated at Old No.7/4, New No.9/5, Avathanam Pappayya Road, Choolai, Taluk-58, Zone-5, Chennai District, Chennai-112-giving public interest complaint-regarding.

The above mentioned public interest complaint is that the very old building is more than 80 years old situated in the above said address and also that building constructed without getting prior permission from corporation. The government school and general public moving area near that building. Two wheeler, heavy vehicles, pedestrians are using via this road. This old building is in very danger position and at

any time this building will destroy and also immolate so many people.

So, we are narrated about this to the building owner Mrs.R.Kumutha wife of Rajendiran but no use. At any time will cause danger to children's studying in school near this building, general public crossing the road, residing persons.

So, we are requesting, the corporation please to take legal action against the building owner and to remove the old building. Enclosed the copy of Thina Thanthi newspaper publication dated 17.12.2016 at page 5 and photocopy of the building.

By
CNR development Movement"

8. Responding to the notice, Mr.Soundararajan, learned Standing Counsel for the Greater Chennai Corporation, has produced the original record, pertaining to grant of permission to demolish and construct the subject building. He has also produced the order made in R.C.O.P.No.1720 of 2016, dated 13.08.2018, passed by the learned Rent Controller, XVI Small Causes Court, Chennai, granting the prayer sought for under Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by Act 23 of 1973 and the details of the case status of appeals, arising therefrom.

9. Heard the learned counsel for the parties and perused the materials available on record.

10. Chapter X of the Chennai City Municipal Corporation Act, 1919 deals with "Building Regulations". Files discloses that on 24.05.2017 the 4th respondent has obtained sanction for demolition and reconstruction of the subject building which expired on 24.11.2018.

11. Before the learned Rent Controller, the 4th respondent has deposed that the age of the building is 80 years and the walls and roof of the building are in weak condition. Hence he bona fidely required it for demolition and reconstruction. Further, in her cross examination, he has categorically deposed that the building is in deteriorating condition and may fall down any time which may cause injury to the patients visiting the respondent clinic and that they are not responsible if any untoward incident occurs because of the condition of the building and she has further deposed that she has obtained permission for demolition and sanction plan for reconstruction.

12. Going through the statutory provisions, pleadings and evidence, the learned Rent Controller, has granted the relief under Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by Act 23 of 1973. However,

three Rent Control Appeals, have been filed by Mr.B.J.Vittal Rao, Mr.G.Srinivasan and Dr.T.Ashok Kumar, and the appeals are slated for hearing on 20.08.2019. When the statutory appeals are pending, issuing a mandamus at this stage, would adversely affect the right of the tenant to have the appeals disposed of. At the same time, if any building in a dilapidated stage and likely to endanger human safety and damage to other buildings, then the Corporation of Chennai in larger public interest, has to take appropriate action.

13. From the pleadings, it could be deduced that the petitioner a resident of Pallikaranai, Chennai, is stated to have noticed a building in Choolai, Chennai, and contended that it is in dilapidated condition. He has contended that the building has no planning permission from the Corporation of Chennai. He has further contended that there are tenants and rent control proceedings pending. Source of the above averments is not supported by any document.

14. In the matter of Public Interest Litigation, High Court, Madras has issued a circular, which reads thus:-

NOTIFICATIONS BY HEADS OF DEPARTMENTS, ETC.
JUDICIAL NOTIFICATION

Rules to Regulate the Public Interest Litigations
filed under Article 226 of the Constitution of India

(Roc.No.670-A/2010/F-1)

No.SRO C-2/2010.

By virtue of Article 225 of the Constitution of India and of all other powers hereunto enabling, the High Court makes the following Rules to regulate Public Interest Litigations (PIL) filed under Article 226 of the Constitution of India:

Every Public Interest Litigation must be filed in accordingly with the following rules:-

1. Every PIL must indicate that the petitioner has no personal interest in the case. If he has any personal interest, he must disclose the same. In the event of the High Court finding the claim as frivolous or vexatious, the PIL shall be dismissed with exemplary cost.

2. If the PIL is filed on behalf of a class of persons, the details of the persons for whose benefit the PIL is filed, must be indicated. If it is a society or association of persons, the writ petitioner must enclose a resolution from such society or

association of persons, authorising the petitioner to file the writ petition and if the body is duly registered with competent authority, a copy of the bye-laws of the said body authorising the petitioner to file the writ petition, shall be enclosed.

3. If the petitioner has filed any PIL earlier, the details of the petition, and the final order, if any, passed in that petition, the relief granted and costs, if any, awarded, shall be indicated. No Public Interest litigation Petition will be entertained in respect of civil disputes between individuals or in service matters. The petitioner shall give an undertaking that he will pay the costs, if any, if it is found to be intended for personal gain or oblique motive.

4. The petitioner must disclose whether he has filed the petition out of his own funds or from other sources. If it is the latter, the particulars should be given.

5. The petitioner must state in the affidavit that to his knowledge, no PIL arising on the same issue, has been filed anywhere.

6. The affidavit filed by the petitioner must contain the averments that he has filed the writ petition based on his information and his personal knowledge. If he has filed the writ petition based on an information received from any other source, he must clearly indicate the source. If it is a newspaper report, the affidavit shall clearly state as to whether the deponent has verified the facts by personally visiting the place or talking to any responsible person or Reporter or Editor of the newspaper concerned.

7. If the petitioner has given any representation to any authority, a copy of the same shall be filed in the typed set of papers along with reply, if any, received from the authority. He shall file the proof of service of representation before the Court.

The above rules will not be applicable to the Public Interest Litigations taken on file by the High Court suo motu.

High Court, Madras,
26th July 2010.

S. VIMALA,
Registrar-General.

NOTIFICATIONS BY HEADS OF DEPARTMENTS, ETC.
JUDICIAL NOTIFICATIONS
Amendment to the Rules to regulate the Public Interest
Litigations
Framed by the High Court.

(R.O.C.No.4452-A/2014/F1)

No.SRO C-7/2015.

By virtue of Article 225 of the Constitution of India and of all other powers hereunto enabling, the High Court makes the following amendment to Rule 4 of the Rules to regulate the Public Interest Litigations filed under Article 226 of the Constitution of India as published in Tamil Nadu Government Gazette, Part III-Section 2, Issue No. 31, dated 11-08-2010.

AMENDMENT:- For Rule 4, the following Rule shall be substituted namely-

"4. The petitioner must disclose his avocation, annual income and other particulars as to whether he is an Income Tax Assessee or not? If he is an Assessee, he must furnish the PAN number. The petitioner must also disclose whether he has filed the petition out of his own funds or from other sources. If it is the latter, the particulars should be given.

High Court, Madras,
6th January 2015.

P. KALAIYARASAN,
Registrar General.

15. Petitioner has not satisfied the requirements of a public interest litigation, as contemplated in the circular. Besides, when the appeals are pending there cannot be a parallel proceeding on the same issue, adversely affecting the rights of the tenants, who have not been impleaded in this writ petition. Though the petitioner has sought for a relief against the officials of Corporation of Chennai, prayer sought for in this writ petition, if granted, then it would certainly affect them. Writ petition deserves to be dismissed for non-joinder of necessary parties, tenants.

16. For the abovesaid reasons stated supra, writ petition is dismissed. No Costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

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Sub Assistant Registrar

To

1.The Commissioner,
Chennai Corporation,
Rippon Building, Chennai - 600003.

2.The Assistant Commissioner,
Zone V, Chennai Corporation,
Chennai.

3.The Executive Engineer,
Chennai Corporation,
Zone V, Chennai.

+1cc to Mr.Soundararajan, Advocate, S.R.No.66828

W.P.No.16269 of 2017

MG(CO)

RRS (08/08/2019)



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