



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2019

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THE HONOURABLE MR.JUSTICE **K.RAVICHANDRABAABU**

AND

THE HONOURABLE MR.JUSTICE **SENTHILKUMAR RAMAMOORTHY**

W.A.(MD)No.596 of 2019

and

CMP(MD)No.4893 of 2019

J.P.Kanna

.. Appellant/Petitioner

Vs.

1.The Commissioner,
Ottanchatram Municipality,
Dindigul District.

2.S.Ramamoorthy

.. Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 19.02.2019 passed in W.P(MD)No.10497 of 2018.

PRAYER IN W.P(MD)No.10497 of 2018:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the impugned notice bearing in Na.Ka.No.350/2018/E1, dated 27.04.2018 of the 1st respondent and quash the same.

For Appellants : Mr.J.Barathan

For Respondents : Mr.J.Pareckumar (for R1)
Mr.P.Santhoshkumar (for R2)

JUDGMENT

[Judgment of the Court was delivered by **K.RAVICHANDRABAABU, J.**]

The writ appeal is filed challenging the final order made in W.P(MD)No.10497 of 2018 dated 19.02.2019 in dismissing the writ petition filed by the appellant. The said writ petition was filed challenging the notice issued by the first respondent Municipality dated 27.04.2018 under Section 218 of the District Municipalities Act, calling upon the petitioner to remove the building in question by alleging that it was in dangerous condition and likely to collapse.



2.The grievance of the petitioner before the Writ Court is that the second respondent being the landlord, has indirectly resorted to evict the petitioner from the premises by instigating the Municipality to issue such notice under Section 218 of the District Municipalities Act, when in fact, the building is not in a dilapidated condition. The learned single Judge, after hearing both parties, dismissed the writ petition by passing a detailed order. The present appeal, though has been filed challenging the said order, in between, a notice dated 15.05.2019 was issued by the first respondent Municipality, in pursuant to the dismissal of the writ petition directing the petitioner to remove the belonging within two days, failing which, by indicating that an action will be taken to remove those belongings on 21.05.2019. It is also an admitted fact that the second respondent/landlord has demolished adjacent portions of the subject properties and through which action, the front portion of the subject matter property also got collapsed. Under the abovesaid circumstances, the petitioner filed a writ petition before this Court in W.P(MD)No.12212 of 2019 challenging the proceedings dated 15.05.2019 and forbearing the respondents therein from demolishing and removing the building, subject matter in the writ petition. It is seen that in that writ petition, an order of interim injunction was granted by the writ Court on 20th May 2019. It is further stated that even though such an order was produced before the Commissioner of Ottanchatram Municipality, who is the first respondent herein, the subject matter property was demolished on 21.05.2019.

3.The learned counsel for the appellant submitted that the writ petition in W.P(MD)No.12212 of 2019 is still pending and the petitioner is taking steps to file contempt proceedings against the parties, who said to have violated the order of interim injunction granted by the Writ Court on 20.05.2019.

4.Now, when we consider the present writ appeal, which is arising out of the order passed by the writ Court challenging the notice issued under Section 218 of the District Municipalities Act, we are of the view that in view of the admitted fact that the building situated at the subject matter property has already been demolished, nothing survives in this writ appeal to be considered further as to whether the demolition notice issued by the first respondent can be sustained or not, as it would be only a futile exercise. The main contention raised by the learned counsel for the appellant before this Court is that under the guise of demolishing the superstructure, the second respondent/landlord cannot take possession of the property from the appellant, as he is entitled to be in possession, in view of Section 108(e) of the Transfer of Properties Act, 1882, where the option to continue the lease is left to the lessee in the event of certain events that take place as contemplated under the said sub-clause. Therefore, the learned counsel seeks some observation from this Court with regard to the nature of possession held by the



petitioner/appellant.

5.It is brought to our notice by the learned counsel appearing for the second respondent/landlord that the petitioner/appellant herein has already gone before the civil Court and filed a suit in O.S.No.123 of 2018 on the file of District Munsif Court, Ottanchatram seeking for permanent injunction not to disturb the peaceful enjoyment of the subject matter property as a tenant and for a further direction to the defendant therein, namely, the second respondent herein to evict the plaintiff from the suit property only by due process of law.

6.As it is seen that the petitioner has already gone before the civil Court and filed the said suit, needless to say that it is for the petitioner and the second respondent to agitate the matter before the civil Court in respect of the nature of possession over the subject matter property, as we consider that such question purely of a civil nature has to be considered and decided only by the civil Court and not by this Court. Insofar as the present writ appeal is concerned, we have already found that nothing survives in this matter to be adjudicated upon, as the order passed by the first respondent under Section 218 of the District Municipalities Act has been worked out. Therefore, without expressing any view on the merits and contentions raised by both parties, this writ appeal is disposed of with an observation that the finding rendered by the Writ Court has to be construed and confined only with regard to the notice issued under Section 218 of the District Municipalities Act and consequently with regard to the dispute over the possession of the property, it is for the parties to work out their remedy before the civil Court, where the suit is admittedly pending. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

Sub Assistant Registrar(CS)

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+1CC TO MR.P.SRINIVAS, Advocate Sr. No.68628
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MA (CO)