



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.10497 of 2018
and

W.M.P. (MD) No.9601 of 2018

JP.Kanna

... Petitioner

Vs

1.The Commissioner,
Ottanchatram Municipality,
Dindigul District.

2.S.Ramamoorthy

... Respondents

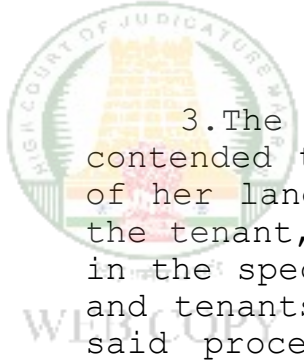
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the impugned notice bearing Na.Ka.No.350/2018/E1, dated 27.04.2018 of the first respondent and quash the same.

For Petitioner	: Mr.Y.Prakash
For R1	: Mr.P.Srinivas
For R2	: Mr.K.Govindarajan for Mr.P.Santhosh Kumar

ORDER

Heard the learned Counsel on either side.

2.The writ petitioner's husband Jeyaprakash was inducted as a tenant by the second respondent in the premises bearing Door Nos.192, 193 and 194, Tharapuram, Ottanchatram, Dindigul District. He was running his business in the name and style of M/s.Chella Silks and Readymades. Following his demise, the petitioner stepped into his shoes. While so, the Commissioner, Ottanchatram Municipality issued notice dated 27.04.2018 under Section 218 of the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920) calling upon the writ petitioner to remove the building in question as it was in a dangerous condition and likely to collapse. It was made clear that in the event of failure on the part of the writ petitioner, the Municipality would carry out the work and recover the expenditure from the petitioner herein. This is under challenge in this writ petition.



3.The learned counsel appearing for the writ petitioner contended that the impugned notice has been issued at the instance of her landlord namely, the second respondent herein. To vacate the tenant, the landlord must take recourse to the procedure set out in the special law governing the relationship between the landlords and tenants. In the present case, he has chosen to bye-pass the said process by prevailing upon the first respondent to invoke Section 218 of the Tamil Nadu District Municipalities Act, 1920. The petitioner firmly contended that the building in question is structurally strong and sound and that therefore the issuance of the impugned notice is not warranted.

4.In order to test the correctness of the assumption underlying the impugned notice, this Court appointed Thiru.P.Siva Chandran as Advocate Commissioner to inspect the property and submit his report. The report dated 09.11.2018 filed by the Advocate Commissioner indicates that the building is a very old one and that it is made of brick, mud and lime and it has suffered a heavy damage. It has been categorically opined that the building is unsafe and that it requires immediate repair/reconstruction. Gaja cyclone struck Dindigul District on 18.11.2018 and the shop in question suffered a heavy hit and its roof had virtually fallen down. The photographs which were taken in the immediate aftermath of the cyclone establish that the shop in question had suffered a heavy damage and that its roofs had fallen down.

5.The learned counsel appearing for the writ petitioner placed reliance on the decision reported in CDJ 2016 MHC 163 (K.S.A.Mohamed Ibrahim (died) & others vs. Parisa Begam & others). Para No.6 of the said decision reads as under :

" "6.In this writ petition, the petitioners are seeking for a Mandamus to direct the official respondents 1 to 3 to demolish the subject matter of building by contending that it is in a dilapidated condition. Needless to say that it is for the petitioners to approach the authorities seeking for permission to demolish, if really the building is in dilapidated condition requiring demolition. Equally, it is not to be stated or reiterated that the official respondents have to consider such application and pass orders on merits and in accordance with law, after conducting proper enquiry and spot inspection of the subject matter of the building. At the same time, the 5th respondent, who is in occupation of the premises as tenant when contends that the building is in good shape and does not require any demolition, such disputed fact cannot be gone into by this Court. Moreover, the proceedings for eviction of the 5th respondent has to be resorted to only before the competent forum, namely, the Rent Controller, even on the ground of demolition and reconstruction. Therefore, it is for the petitioners to obtain an order of demolition from the



competent authority and based on such order, it is for the petitioners to approach the Rent Controller seeking for eviction of the 5th respondent from the premises. Insofar as the petitioners' request for demolition of the building before the respondents 1 to 3 is concerned, it is submitted by the learned counsel appearing for the respondents 1 to 3 that already notice under Section 218 of Tamil Nadu District Municipalities Act has been issued. If that is so, it is for the petitioners to work out their remedy based on such notice before the appropriate authority. As and when any such eviction proceedings is filed, it is open to the 5th respondent to resist such rent control proceedings. Needless to say that based on the respective pleadings of the parties as well as the evidence let in by them, the learned Rent Controller will decide the matter on merits and in accordance with law. When such should be the course of action for the petitioners, filing of the present writ petition before this Court, is not maintainable. Accordingly, I find that the present writ petition cannot be maintained and consequently, the same is liable to be dismissed."

6.The learned counsel for the petitioner produced certain photographs which according to him were taken only recently. It can be seen therefrom that the petitioner is carrying on her business in the petition mentioned shops.

7.I am unable to agree with the stand taken by the petitioner. This is because the local body is under a statutory obligation to prevent nuisance. Chapter 11 of Tamil Nadu Act 5 of 1920 deals with various kinds of nuisance. The said chapter contains as many as 26 provisions. The local body must take precautionary steps in the case of dangerous tanks, wells, holes etc., It has the power to stop dangerous quarrying. If any dwelling house is overcrowded as to endanger the health of the inmates, the executive authority can apply to the magistrate to abate such overcrowding. No person shall keep any animal on his premises so as to be a nuisance or so as to be dangerous. I have referred to these provisions only to indicate the sweep of the power vested in the local authority to deal with nuisance.

8.If a building is in ruinous state and poses a danger to the passers-by or to the occupiers of neighbouring structures, the executive authority is empowered to require the owner or occupier to fence off, or take down or repair such structure so as to prevent any danger therefrom.

9.Section 218 of the Tamil Nadu District Municipalities Act, 1920 reads as under :



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.

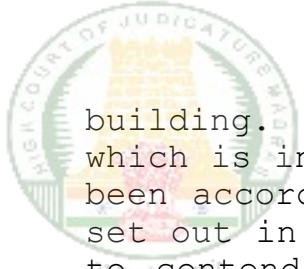
WEB COPY

(2) 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 the cost of doing so shall be recoverable from the owner or occupier in the manner provided in Section 344.

(3) If in the 2[opinion of the Executive Authority],: the said structure is imminently dangerous to the inmates thereof, the 1[Executive Authority] shall order the immediate evacuation thereof and any person disobeying may be removed by any police officer."

10. Section 218 is a special provision pertaining to structures that are in a ruinous state and which pose a danger to others. This being a special provision, it will prevail over any other general provision found in the Rent Control Law authorising the land lord to seek eviction of the tenants on the ground of demolition and reconstruction. The provision in the Rent Control Law is about the right of the landlord to seek eviction. The provision in the Municipalities Act is about preventing any mishap arising out of the condition of the building. It is well settled that "special" will prevail over "general". "generalia specialibus non derogant" - general things do not derogate from specific things. The provision in the Rent Control Law will have to be considered as a general provision and it cannot prevail over Section 218 of the Tamilnadu Act V of 1920. The local body is under a statutory obligation to ensure that the buildings that have become structurally weak and unsafe for human habitation and which pose danger to others are pulled down. Merely because the second respondent brought it to the notice of the first respondent triggering the impugned action, that will not by itself vitiate the proceedings.

11. In fact, the issue is no longer res integra. In the decision reported in CDJ 2007 MHC 2294 (S. Paulraj vs. R. Kaluvayee Ammal), the Hon'ble Division Bench of the Madras High Court dealt with an identical contention and rejected it. The Hon'ble Division Bench was dealing with a corresponding provision occurring in Madurai City Municipal Corporation Act, namely, Section 327. The Hon'ble Division Bench observed that if even in the case of dilapidated and dangerous buildings, the parties will have to move only the Rent Controller, the provision empowering local body to take action will have no meaning because by the time the proceedings before the Rent Controller are concluded, anything may happen to the



building. It was categorically held that insofar as the building which is in dilapidated and dangerous condition where permission has been accorded by the local authority for demolition, the provisions set out in the Rent Control Act cannot be relied upon by the tenant to contend that unless the eviction proceedings are initiated and concluded the permission granted for demolition cannot be given effect to. Of course, the occupier must be given notice. Only where emergent action is required notice to the occupier is dispensed with. Opportunity is given to the occupiers only to enable them to be put on sufficient notice before permission for demolition is granted. This provision for opportunity cannot be stretched to a right to oppose the demolition itself on the ground that the building is not in dilapidated or dangerous condition. In other words, the tenant will not normally have locus standi to contest the satisfaction of the local body with regard to the dangerous condition of the building. Of course, in cases of arbitrary or malafide exercise of this power, intervention of the courts can be sought.

12. Since this decision of the Hon'ble Division Bench was not brought to the notice of the learned Judge who decided the case reported in CDJ 2016 MHC 163 (K.S.A. Mohamed Ibrahim (died) & others vs. Parisa Begam & others), I am of the view that it would not constitute a binding precedent. In this case, the report of the Advocate Commissioner sustains the stand taken by the respondents. Therefore, respectfully following the decision of the Hon'ble Division Bench reported in CDJ 2007 MHC 2294 (S. Paulraj vs. R. Kaluvayee Ammal), I hold that the impugned notice does not warrant any interference. Accordingly, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also stands dismissed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To
The Commissioner,
Ottanchatram Municipality,
Dindigul District.

+1CC TO Mr. Y. Prakash, Advocate, Sr No. 48068
+1CC TO Mr. P. Santhosh Kumar, Advocate, Sr No. 48359
+1CC TO Mr. P. Srinivas, Advocate, SR No. 48467

W.P. (MD) No. 10497 of 2018
19.02.2019

skm