



WEB COPY

W.A.(MD)No.575 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD)No.575 of 2019

and

C.M.P. (MD)Nos.4741 and 5098 of 2019

Devasagayam Chettiar Middle School,
Rep. by its Secretary,
Mr.Senthil Kumar,
S/o. Thilagar,
No.105 & 255, North Masi Street,
Madurai-625 001.

... Appellant

Vs.

1.M.C.C.Murugesan

2.The District Collector,
Madurai District @ Madurai.

3.The Director of Elementary Education,
College Road, Chennai-6.

4.The Joint Director of Elementary Education,
(Aided Schools), Chennai-6.

5.The District Elementary Educational Officer,
R.M.S.Road, Madurai-625 001,
Now Designated as The District Educational Officer,
R.M.S.Road, Madurai-625 001.

6.The Assistant Elementary Educational Officer,
Madurai South, Madurai-625 001.
Now Designated as The Block Educational Officer,
Madurai South, Madurai-625 001.

..Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letter Patent Act, to set aside the order dated 01.04.2019 in W.P.(MD)No.18560 of 2017 and thereby allow the present writ appeal.

Prayer in WP(MD) . 18560/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, to direct the respondents 1 to 5 to take appropriate steps to restrain the 6th respondents school to function at NO. 105 & 255, North Masi Street, Madurai-01, which is violating the basic rules

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and regulations of the government to run a school and thereby transfer all the students of the 6th respondent school to some other school by vacating from the present building in view of safety of the students studying in the said school within the period stipulated by this Court.

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For Appellant : Mr.J.Barathan

For R1 : Mr.M.Sathish Babu

For R2 to R6 : Mrs.S.Srimathy

Special Government Pleader

JUDGMENT

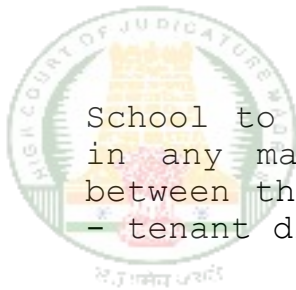
[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.J.Barathan, learned counsel for the appellant, Mr.M.Sathish Babu, learned counsel for the first respondent and Mrs.S.Srimathy, learned Special Government Pleader for the official respondents.

2. The appellant is a tenant under the first respondent / writ petitioner and he is running a school in the building in question. There appears to be a landlord - tenant dispute between the parties. The question before the writ Court was whether the appellant / tenant would be entitled to continue to run a School in the said building, because the first respondent / writ petitioner, landlord has stated that the building is in unsafe condition and cannot be used for running the School. This averment is disputed by the appellant stating that there are several documents to show that the School building is structurally stabled.

3. We cannot be guided by the reports produced by the appellant, more particularly, the certificates issued by the Engineer engaged by the appellant or the records, which are produced by the first respondent / landlord. But the building has to be examined for structural stability by the officials. The District Elementary Educational Officer, who had filed counter affidavit in the writ petition had in an uncertain terms had stated that the building is not fit for being used as School. Further more, the mandatory requirements, with regard to infrastructure, which has been spelt out by the Government based on the suggestions made by the Hon'ble Justice Sampath Commission have not been complied with and would not be able to comply with considering the nature of the construction.

4. Further more, from the photographs, we find that the top floor of the building is temporary roof / asbestos / tin roof and as per the Government Order a School cannot be run under such temporary roof. In such circumstances, we direct the appellant to shift the



School to some other premises and we make it clear that this order in any manner cannot impede the parties to resolve the dispute between the appellant and the first respondent, namely the landlord - tenant dispute.

5. In normal circumstances, we would have granted reasonable time for the petitioner to relocate. After taking note of the counter affidavit filed by the appellant before the writ Court, which has been affixed in the typed set of papers, we find that the appellant has given an undertaking before the writ Court that he will shift the School to the new building within a period of three months without prejudice to his tenancy right. In the light of the undertaking, the appellant could not have filed the writ appeal and we would be well justified in initiating contempt action against the appellant and also imposing heavy costs. However, we refrain from doing so, because the learned counsel, who is now appearing for the appellant did not appear for him in the writ petition. Therefore, we are not inclined to give time to the petitioner, but we direct the District Elementary Educational Officer, Madurai and Assistant Elementary Educational Officer, Madurai to close the School on 11.11.2019 and intimate the parents that the School will close from 11.11.2019 and all the students should be temporarily accommodated in the Government School till the construction of the appellant's School is completed and the students as well as the teachers will be there. Accordingly, this writ appeal fails and the same stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar (CS)

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To

1.The District Collector,
Madurai District @ Madurai.

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+1 CC to M/s.N.SATHISH BABU, Advocate (SR-96439[F] dated 06/11/2019

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-96692[F] dated
07/11/2019)

W.A. (MD) No. 575 of 2019
06.11.2019

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