

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:28.11.2019

PRONOUNCED ON:01.06.2020

CORAM

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No.17781 of 2019

D. Sundarapandiyan

...Petitioner

-vs-

- 1.The Principal Secretary,
Health and Family Welfare Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
- 2.The Director of Medical and Rural Health Services,
Directorate of Medical and Rural Health Services,
DMS Complex,
No. 356-361, Anna Salai,
Chennai - 600 006.
- 3.Dr.Aslam Yosuff
- 4.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai - 600 003.
- (R4 impleaded vide order
dated 31.07.2019 in
W.M.P.No.19663 of 2019)
- 5.The Revenue Divisional Officer cum Sub Collector,
North Chennai Division,
No. 473, Tondiarpet Road,
Chennai - 600 081.

(R5 impleaded vide order
dated 19.09.2019 in
W.M.P. No. 27502 of 2019)

...Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing to consider the Petitioner's representation dated 06.06.2019 and to restrain the Third Respondent from

running a clinic or hospital in the property bearing Old Door No. 10, New Door No. 19, Subramaniyan Street, Chennai - 600 007, as the building is in a dilapidated condition.

For Petitioner : Mr. P.Sesubalan Raja

For Respondents : Mr. M.Karthikeyan,
Additional Government Pleader
(for R1, R2 and R5)

Mr. C.Prabhakaran(for R3)

Mr. G.Anantharangan,
Standing Counsel(for R4)

O R D E R

Heard Mr. P.Sesubalan Raja, Learned Counsel for the Petitioner, Mr. M.Karthikeyan, Learned Additional Government Pleader appearing for the First, Second and Fifth Respondents, Dr. S.S.Swaminathan, Learned Counsel appearing for the Third Respondent and Mr. G.Anantharangan, Learned Standing Counsel appearing for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner is a co-owner of the property bearing Old No. 10, New No. 19, Subramanian Street, Chennai - 600 007. The Third Respondent, who is a doctor by profession, is occupying the building in that property as tenant and he is said to be using it as clinic from the year 1982 onwards. It is claimed by the Third Respondent that he is promptly remitting the monthly rents to the Petitioner and there is no default or arrears, but with ulterior motive of dispossessing him from that premises, the Petitioner has been making false complaints against him to various authorities, and in that backdrop, the Third Respondent has filed a suit in O.S. No. 1538 of 2019 before the XIII Assistant City Civil Court, Chennai for permanent injunction restraining the Petitioner from interfering with his possession and enjoyment and day-to-day running of the clinic in that property except by due process of law, which is pending. On the other hand, the Petitioner has filed R.L.T.O.P. No. 47 of 2019 before the Small Causes Court, Chennai under Sections 21(2)(A) and (E) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, for eviction of Third Respondent from that property on the ground that he is denying the title of the Petitioner to that property and refusing to come forward for entering into a fresh tenancy agreement enabling him to register the same with the authority concerned, which is also pending.

3. In the meanwhile, the Tamil Nadu Clinical Establishments (Regulation) Act, 1997 (hereinafter referred to as 'TNCERA' for brevity and convenience), has come into force with effect from 24.04.2018 and the Government of Tamil Nadu had required the existing clinics to be registered under that enactment by 31.05.2019 and had subsequently extended that time limit till 30.11.2019. The Third Respondent claims to have made an application before the Second Respondent on 12.04.2019 for registration of his clinic in that property under the TNCERA, while the Petitioner has objected for the same by a letter dated 06.06.2019 citing that the building is in dilapidated condition and that the life and property of the general public would be in danger, if the building collapses. At that stage, the Petitioner has on 19.06.2019 filed this Writ Petition to direct his representation dated 06.06.2019 to be considered and to restrain the Third Respondent from running any clinic in the property. It is informed on behalf of the Second Respondent during the hearing on 01.10.2019 that pursuant to that application made by the Third Respondent for registration of his clinic in the property, certain documents have been furnished by him, and he had been required to furnish ownership details of the premises/rental agreement and to make available certain display boards as per the Tamil Nadu Clinical Establishments (Regulations) Rules, 2018, within 15 days, which is awaited.

4. That apart, it is brought to notice that the Petitioner has made a representation dated 14.05.2019 to the Fifth Respondent not to issue or renew any licence for the clinic of the Third Respondent in the property under the provisions of the Tamil Nadu Public Buildings (Licensing) Act, 1965 (hereinafter referred to as 'TNPBLA' for brevity and convenience), and inspect the dilapidated condition of the building and stop the functioning of the clinic to save the lives of the innocent public. It may be pointed out here that Section 3 read with Section 2(8) of the TNPBLA mandates that a building shall not be used as clinic without a licence, and except in accordance with the terms and conditions specified therein. On a combined reading of Sections 4 and 5 of the TNPBLA, it is incumbent upon the Competent Authority to obtain the opinion on the structural soundness of the building from such Engineer, as the Government of Tamil Nadu may specify in this behalf, by way of a Certificate in the prescribed form, where an application has been made for such licence but has not been accompanied by that Certificate. In terms of Section 15 of TNPBLA, the Competent Authority has been empowered to forthwith prohibit, by written order, the use of a building as clinic and to take such steps and use such force, as may be necessary, if it is satisfied upon inspection of a building that there is no licence, or the building is in a ruinous state, or that there is reason to apprehend imminent danger to life and property, without

prejudice to any other action under that enactment. It is stated in the Status Report dated 22.10.2019 filed by the Fifth Respondent that the Third Respondent has neither obtained any licence nor made any application for such licence under the TNPBLA.

5. Having regard to the effect on the inter se rights of the Petitioner and the Third Respondent vis-à-vis the outcome of the aforesaid pending legal proceedings between them before the various fora under the relevant enactments, this Court, without expressing any view on the correctness or otherwise on either of their contentions in the disputes raised, deems it appropriate to pass the following order:-

- (i) The Fifth Respondent shall, after issuing due notice to the Petitioner and the Third Respondent, inspect the building in the property accompanied by the Engineer specified in Section 5(1) of the TNPBLA, which shall be fully videographed at the cost borne in advance by the Petitioner, and copies of the report containing the opinion of that Engineer on the structural soundness of the building, shall be forthwith supplied to the Petitioner and the Third Respondent;
- (ii) The Fifth Respondent, treating the representation dated 14.05.2019 made by the Petitioner as having been submitted for exercise of powers under Section 15 of the TNPBLA, shall then afford full opportunity of personal hearing to the Petitioner and the Third Respondent in the presence of each other in an enquiry to be conducted on a specified date for that purpose and shall dispassionately consider each of their rival contentions with reference to the materials borne out of the record and shall pass reasoned orders on merits and in accordance with law and communicate that decision taken to the Petitioner and the Second and Third Respondents under written acknowledgement;
- (iii) The aforesaid exercise shall be endeavoured to be completed by the Fifth Respondent within a period of 30 days from the date receipt of copy of this order;
- (iv) The Second Respondent, on receipt of copy of the order from the Fifth Respondent under clause (ii) supra, shall thereafter afford full opportunity of personal hearing to the Petitioner and the Third Respondent in the presence of each other in an enquiry to be conducted on a specified date on the application dated 12.04.2019 made by the Third Respondent for registration of the clinic in the building under Section 3 of the TNCERA and the objection dated 06.06.2019 made thereto by the Petitioner, and shall

dispassionately consider each of their rival contentions with reference to the materials borne out of the record and shall pass reasoned orders on merits and in accordance with law, and communicate that decision taken to the Petitioner and the Third Respondent under written acknowledgement;

- (v) The aforesaid exercise shall be endeavoured to be completed by the Second Respondent within a period of 30 days from the date receipt of copy of the order from the Fifth Respondent under clause (ii) supra;
- (vi) The Petitioner and the Third Respondent shall not abstain from attending or seek unnecessary adjournments and shall extend their fullest co-operation to the Second and Fifth Respondents for the expeditious disposal of the aforesaid proceedings;
- (vii) The Second and Fifth Respondents, while deciding the aforesaid matters under the relevant statutory provisions, shall not be influenced or inhibited by the pendency or outcome of the proceedings in O.S.No. 1538 of 2019 filed by the Third Respondent in the XIII Assistant City Civil Court, Chennai or in R.L.T.O.P. No. 47 of 2019 filed by the Petitioner in the Small Causes Court, Chennai, which pertain to different reliefs sought by those respective parties; and
- (viii) In the event of the Second and/or Fifth Respondents holding that the Third Respondent shall not be entitled to use the building in the property as clinic and taking any further steps to restrain the Third Respondent in that regard, it shall not ipso facto entitle the Petitioner to dispossess the Third Respondent from that property, and he would have to await the ultimate outcome of R.L.T.O.P. No. 47 of 2019 filed by him in the Small Causes Court, Chennai under Sections 21(2)(A) and (E) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, for eviction of the Third Respondent from the premises.

6. Accordingly, the Writ Petition is disposed on the aforesaid terms. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

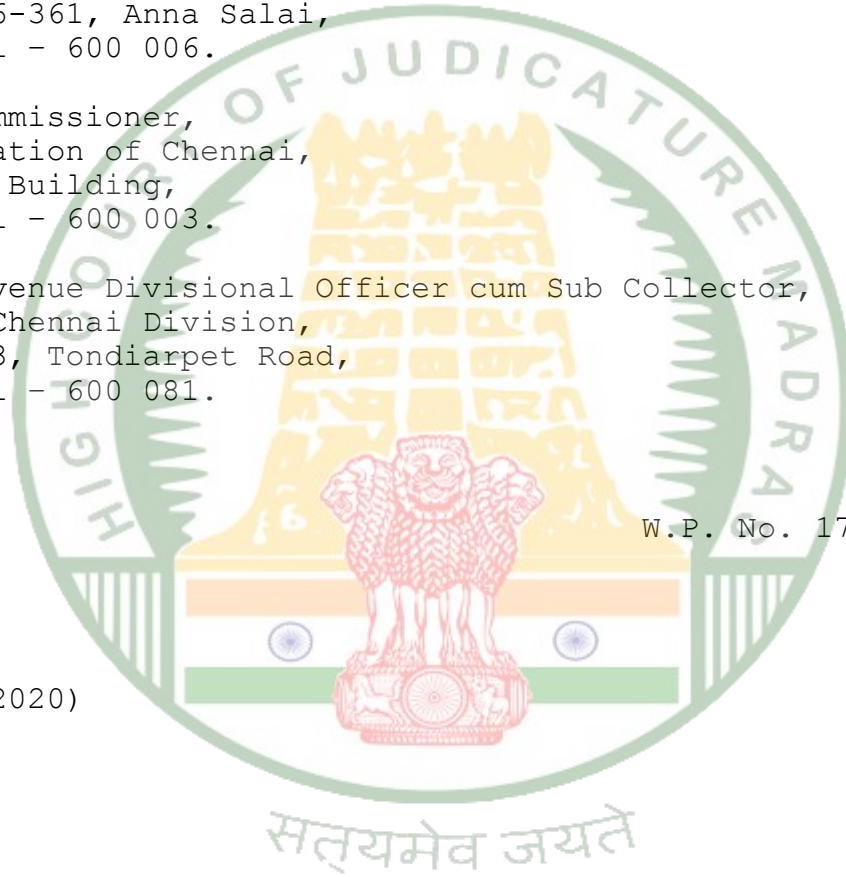
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To

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AK(CO)
RN(09/06/2020)



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