



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.03.2020
CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD)No.4729 of 2020
and
W.M.P.(MD)No.4104 of 2020

M/s.Vasanth & Co.
represented by its Manager (HR),
S.Moorthy : Petitioner

Vs.

1.The Commissioner,
Nagercoil Corporation, Nagercoil.

2.John Alfred : Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to direct the first respondent to dispose the petitioner's representation, dated 25.02.2020 to defer all further eviction proceedings, so far as the portion occupied by the petitioner in "DDJ Commercial Complex, Balamore Road, Nagercoil.

For Petitioner : Mr.D.Vijayakumar
For R1 : Mr.P.Aathimoola Pandian

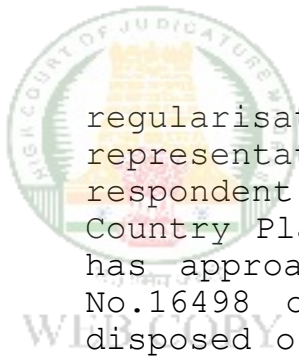
ORDER

(Order of the Court was delivered by **S.S.SUNDAR,J.**)

This Writ Petition is filed for a direction to the first respondent to dispose the petitioner's representation, dated 25.02.2020 to defer all further eviction proceedings, so far as the portion occupied by the petitioner in "DDJ Commercial Complex, Balamore Road, Nagercoil.

2.By consent of both parties, the Writ Petition is taken up for final disposal at the stage of admission itself.

3.The petitioner is one of the tenants in the building constructed by the second respondent. It appears that there is some dispute arose between the second respondent and the Corporation, Nagercoil on few issues. It is admitted that the building constructed by the second respondent is not approved and therefore, the second respondent has submitted a representation for



regularisation of the construction. However, the said representation was rejected and as against the same, the second respondent has preferred an appeal before the Director of Town and Country Planning, Chennai. In the meanwhile, the second respondent has approached this Court by filing a Writ Petition in W.P.(MD) No.16498 of 2019. This Court, by order, dated 31.07.2019, has disposed of the Writ Petition filed by the second respondent herein in the following lines:

"9. In view of the fact that the appeal has already been preferred by the writ petitioner as against the order of rejection of the revised planning permission sought for by the petitioner, we are of the view that the said appeal has to be taken up and decided on its own merits and in accordance with law without reference to any of the findings rendered by the Civil Court in the above said suit as well as the order passed in the condone delay application, by the appellate Court. Therefore, without expressing any view on the merits of the claim made by the respective parties, this writ petition is disposed of as follows:-

(i). The petitioner is directed to re-present the appeal before the appellate authority viz., the Director of Town and Country Planning/second respondent herein with all relevant papers within a period of two weeks from the date of receipt of a copy of this order.

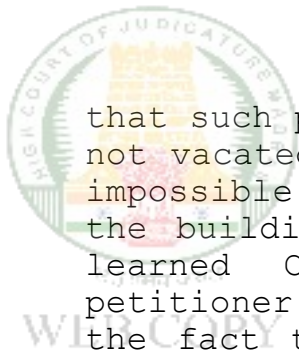
(ii). On receipt of such appeal with necessary documents, the second respondent/appellate authority shall consider the same and pass appropriate orders on merits and in accordance with law, within a period of six weeks thereafter.

(iii). Till an order is passed by the appellate authority, status-quo as on today shall be maintained by both parties.

No costs. Consequently, connected Miscellaneous Petition is closed."

4. It is also admitted by the authorities that another tenant, by name, M/s. Vijaya Bank, now Bank of Baroda, filed Writ Petitions in W.P.(MD) Nos. 19458 and 19468 of 2019 for a direction to the respondents to consider their representation, dated 01.08.2019 to grant one year time to vacate the premises owned by second respondent herein. This Court, when disposed of the Writ Petition, granting time till 30.12.2019, in case the appeal petition filed by the second respondent herein is dismissed.

5. The request of the petitioner herein is not strictly in terms of the provisions of statute. The first respondent herein is competent to decide such representation on merits. Though the petitioner has submitted a representation before the first respondent, the learned Counsel for the first respondent submitted



that such permission cannot be granted, as several tenants, who have not vacated the premises, may come one after another and it will be impossible for the first respondent to proceed with demolition of the building. In the said circumstances, this Court requested the learned Counsel for the first respondent to consider the petitioner's representation on humanitarian ground, having regard to the fact that the petitioner and other tenants have invested and that they may require some time to shift their business to some other place without any damage to the reputation. The learned Counsel for the first respondent has no instruction from the first respondent regarding grant of time.

6.Considering the grievance of the petitioner and the submission of the learned Counsel for the first respondent, this Court is of the view that the matter need not be decided based on legal submissions. The fact remains that the petitioner is in possession and enjoyment of the building for a long time, as a tenant carrying on business. The petitioner must have invested heavy amount. Unfortunately, the building is facing demolition for want of proper approval. The application submitted by the second respondent for regularisation has been turned out by the Town and Country Planning Authorities. It is also brought to notice of this Court that building is constructed in a land, which forms part of Government poramboke lands where a water channel is running.

7.In such circumstances, we do not expect the Government or the authorities under the Town and Country Planning Department to regularise the construction. It is only in the said context, the learned Counsel for the petitioner submitted that the petitioner will be put irreparable loss. The demolition of building though painful, it cannot be avoided in cases of this nature. However, tenants, who have taken the property on lease for commercial venture, are greatly affected for no fault on them. Hence, some lenience can be shown in the case of petitioner, as it was shown by this Court earlier in the case of M/s.Vijaya Bank.

8.Considering the grievance of the petitioner and the nature of business run by the petitioner, two months time from today is given to the petitioner to vacate the premises. No further extension can be sought for by the petitioner on any ground. Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed. This order cannot be taken advantage of by anyone including the second respondent.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



The Commissioner,
Nagercoil Corporation, Nagercoil.

+1 CC to Mr.D.VIJAY KUMAR, Advocate (SR-10131[F] dated 05/03/2020)

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MK (13.03.2020) 4P 3C