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W.P. (MD) Nos. 7050 & 7052 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 27.07.2020

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THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

and

THE HONOURABLE MR. JUSTICE P. RAJAMANICKAM

W.P. (MD) Nos. 7050 & 7052 of 2020

and

W.M.P. (MD) Nos. 6489 & 6487 of 2020

P.Velu Asari ... Petitioner in W.P. (MD) No. 7050 of 2020

D.Selvam ... Petitioner in W.P. (MD) No. 7052 of 2020

Vs.

1. The District Collector,
O/o. The District Collector,
Tirunelveli District.

2. The Commissioner,
Tirunelveli Municipal Corporation,
Tirunelveli. ... Respondents in both WPs

PRAYER in W.P. (MD) No. 7050 of 2020: : Petition filed under Article 226 of the Constitution of India praying to issue a writ of CERTIORARIFIED MANDAMUS to call for the records of impugned order in Na.Ka.No/6974/TP2/2020, dated 03.06.2020 passed by the second respondent and quash the same as illegal and consequently forbear the respondents or his subordinate from interfering with the petitioner's peaceful possession and enjoyment of the dwelling house bearing in Door No.3A/7, Sivankovil, Theppakulam Meltheru, Palayamkottai, Tirunelveli District.

PRAYER in W.P. (MD) No. 7052 of 2020: Petition filed under Article 226 of the Constitution of India praying to issue a writ of CERTIORARIFIED MANDAMUS to call for the records of impugned order in Na.Ka.No/6974/TP2/2020, dated 03.06.2020 passed by the second respondent and quash the same as illegal and consequently forbear the respondents or his subordinate from interfering with the petitioner's peaceful possession and enjoyment of the dwelling house bearing in Door No.3A/4, situated at Sivankovil, Theppakulam Meltheru, Ambigavathi Street, Palayamkottai, Tirunelveli District.

For Petitioner : Mr.M.Maharaja
(in both WPs)



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For Respondents : Mr.R.Murugan,
Additional Government Pleader
for R-1
Mr.Aayiram K.Selvakumar
Additional Government Pleader
for R-2
(in both WPs)

COMMON ORDER

(Common Order of the Court was made by M.SATHYANARAYANAN.J)

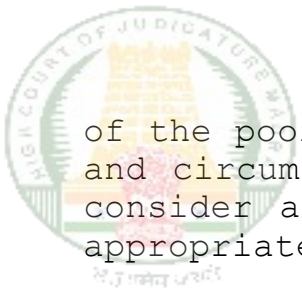
Both the writ petitions are taken up and disposed of by the common order, as the issue to be adjudicated is one and the same.

2. In W.P.(MD)No.7050 of 2020, the petitioner claims to be a resident of D.No.3A/7, T.S.No.1303/1, Sivankovil, Theppakulam Meltheru, Palayamkottai, Tirunelveli District. According to him, he is a resident of a superstructure in the above said address along with his family members for the past 40 years and he is eking out his livelihood as a daily coolie and the superstructure in question is also subjected to all statutory levies and those levies have been promptly paid.

3. In W.P.(MD)No.7052 of 2020, the petitioner claims to be a resident of D.No.3A/4, T.S.No.1305, Sivankovil, Theppakulam Meltheru, Palayamkottai, Tirunelveli District. According to him, he is a resident of superstructure in the above said address along with his family members for the past 40 years and he is eking out his livelihood as a daily coolie and the superstructure in question is also subjected to all statutory levies and those levies have been promptly paid.

4. The learned counsel appearing for the petitioners has drawn the attention of this Court to the impugned notice issued by the second respondent/Corporation under Section 327 of the Tirunelveli City Municipal Corporation Act, 1994. The contents of the said notice would show that the superstructure in which, the petitioners along with their family members residing is unsafe and in dilapidated condition and the attention of this Court is also drawn to the photographs made available in the additional typed set of papers dated 23.07.2020.

5. The primordial submission made by the learned counsel appearing for the petitioners is that in response to the impugned notice, the petitioners have also given their representations to the second respondent / Corporation and taking into consideration



of the poor economic background of the petitioners and other facts and circumstances, this Court may direct the second respondent to consider and dispose of the petitioners' representations and pass appropriate orders and save their property from demolition.

6. Per contra, Mr. R. Murugan, learned Additional Government Pleader appearing for the first respondent and Mr. Aayiram K. Selvakumar, learned Additional Government Pleader appearing for the second respondent, on instructions, would submit that the official respondents also caused inspection and also taking into consideration of the fact that the superstructures are in dilapidated condition has rightly issued notice under Section 327 of the Tirunelveli City Municipal Corporation Act, 1994 for taking appropriate action and if any interim protection is granted, in the event of superstructure being fallen, neither the Government nor the second respondent has any cause and consequence and hence, prays for dismissal of the writ petitions.

7. This Court has carefully considered the rival submissions and perused the materials on record carefully.

8. Section 327 of the Coimbatore City Municipal Corporation Act, 1981, is made applicable to Tirunelveli City Municipal Corporation and the relevant provision is extracted hereunder:-

"327: Precaution in case of dangerous structures:- (1) If any structure be deemed by the Commissioner to be in a ruinous state or dangerous to passers-by or to the occupiers or neighbouring structures, the commissioner 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.

(2) If immediate action is necessary, the Commissioner may himself before giving such notice or before the period of 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 478.

3) If, in the Commissioner's opinion, the said structure is imminently dangerous to the inmate thereof, the Commissioner shall order the immediate evacuation thereof and any person disobeying may be removed by any police officer."



9. The Executive Engineer, Public Works Department, Buildings and Maintenance, Tirunelveli has sent a communication to the second respondent in letter No.Val/ 1397/Ko.55/2020, dated 11.06.2020 and the contents of the said letter would disclose that the superstructures in the form of encroachments in Sivan Kovil, Teppakkulam, Palayamkottai, Tirunelveli, in T.S.No.1303/1, 1291/2, 1304, 1305 and 1307 have been inspected and the walls of the superstructure has been unplastered and the ceilings of the said superstructures are likely to be fallen at any time and that apart, the superstructures are more than 60 years old and since the walls are damaged and in dilapidated condition, the said superstructures are recommended for immediate demolition.

10. In the light of the above stated communication coupled with the materials and taking into consideration the poor economic background of the petitioners, this Court directs the second respondent to consider and dispose of the petitioners' representation dated 11.06.2020 in accordance with law and pass orders within a period of three weeks from the date of receipt of a copy of this order and till a such time, shall defer the demolition of superstructures in question. It is also made clear that in the interregnum, if the superstructures are fallen down and which may lead to loss of lives and injuries to persons or to the property, the petitioners alone are mulcted with the responsibility and it may not obligatory on the part of the Government as well as the Tirunelveli City Municipal Corporation, Tirunelveli to pay compensation or other reliefs to the aggrieved persons.

11. The writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

DSS/VS

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for

<https://hcservices.ecourts.gov.in/hcservices/>



W.P. (MD) Nos. 7050 & 7052 of 2020

official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The District Collector,
O/o. The District Collector,
Tirunelveli District.

2. The Commissioner,
Tirunelveli Municipal Corporation,
Tirunelveli.

**W.P. (MD) Nos. 7052 & 7050 of 2020
and**

**W.M.P. (MD) Nos. 6489 & 6487 of 2020
27.07.2020**

KM (04.08.2020) 5P 3C