

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 18.03.2021

CORAM

THE HON'BLE MR. JUSTICE B.PUGALENDHI

WRIT PETITION NOS.4534, 4539, 4546, 2609, 4056, 4059, 4011,
2972, 3787, 3996, 4064, 4001, 3789, 4007 & 3781 OF 2021

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W.M.P.NOS.5161, 5173, 5154, 5156, 5168, 5172, 4639, 4628, 4633,
4629, 4582, 4317, 3334, 4563, 4318, 3335, 4561, 4572, 4576,
2934, 4581, 4313, 4568, 4578, 2935, 4324, 4323, 4311, 4637, 4634
OF 2021

1 M.SERARAM ... PETITIONER in WP.No.4534 of 2021
1 ARUMUGAM ... PETITIONER in WP.No.4539 of 2021
1 A.K.THANGAVEL ... PETITIONER in WP.No.4546 of 2021
1 MAULANA ... PETITIONER in WP.No.2609 of 2021
1 RAJAGOPALAN ... PETITIONER in WP.No.4056 of 2021
1 M.SHANTHAKUMAR ... PETITIONER in WP.No.4059 of 2021
1 R.BALA SUBRAMANIAM ... PETITIONER in WP.No.4011 of 2021
1 A.MYLEVAKANAN ... PETITIONER in WP.No.2972 of 2021
1 M.R.NATARAJAN ... PETITIONER in WP.No.3787 of 2021
1 G.A.SHANMUGAM ... PETITIONER in WP.No.3996 of 2021
1 MOHAMED MUSTAPA ... PETITIONER in WP.No.4064 of 2021
1 G.K.GUNASEKARAN ... PETITIONER in WP.No.4001 of 2021
1 THIRUMOORTHY ... PETITIONER in WP.No.3789 of 2021
1 C.G.M.BUBHANESWARAN ... PETITIONER in WP.No.4007 of 2021
1 J.GANAPATHI LAL ... PETITIONER in WP.No.3781 of 2021

Vs.

The Commissioner,
Gobichettipalayam Municipality,
Gobichettipalayam, Tamil Nadu.

... Respondent
in All WPs

Common Prayer:-

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of Certiorari calling for the records of the respondent herein in two impugned order in Na.Ka.No.2190/2020/A3 dated 02.02.2021 and Na.Ka.No.2190/2020/A3 dated 02.02.2021 passed by the respondent and quash the same. (in All WPs)

For Petitioner : Mr.P.M.N.Bhagavathkrishnan
for Mr.Srinath Sridevan

For Respondents: Mr.S.R.Raja Gopal, AAG
Assisted by Mr.B.Anand, GA
...in all WPs

COMMON ORDER

These Writ Petitions are filed as against the notice of eviction issued by the respondent Municipality under Section 206 and 208 of the Tamil Nadu District Municipalities Act, 1920 herein.

2.The petitioners are tenants in the shopping complex of the respondent Municipality opposite to Periyar ground, Gobichettipalayam and the condition of the building is in dangerous condition, not conducive for a public building and therefore a proposal was made by the respondent Municipality for demolishing the same and for reconstruction. Pursuant to this decision, a notice was issued on 08.10.2020 calling upon the petitioners to vacate the shops on or before 30.11.2020. As against the same, the petitioners have filed a writ petition in W.P.No.15999 of 2020 etc batch and this Court by order dated 17.12.2020 directed the respondents to appoint an Independent Expert to assess the stability and the structure of the building in a scientific manner and get a report from the expert.

3.Accordingly, the respondents have also availed the services of the IIT Madras Incubated Company and examined the condition of the building through an Expert Body. The Expert Body submitted its report on 21.01.2021 which reads as follows;

"Considering the fact that the Daily Market Complex Building is a public building, it should

necessarily conform to the specifications laid down in IS 456:2000 for the durability and strength considerations. The results of the investigation have clearly shown that the integrity of the concrete is "Doubtful" in a majority of the locations tested. The diffusion of carbon dioxide has taken place well beyond the cover concrete and consequently depassivating the steel rebars resulting in the corrosion of the rebars and the spalling of concrete at many locations. Even in some currently unaffected locations, there are signs of the beginning of reinforcement corrosion. Overall, the concrete as well as the steel in the building are not in good condition.

The damage to the weathering course in the terrace has resulted in the seepage of water leading to dampness in many RC structural elements as well as the masonry wall of the Building. Further, patch repair has been carried out in the RC roof slab at many locations.

Hence, it is very clear from the visual inspection as well as the NDT tests conducted that the durability considerations have not been satisfied in the various RC structural elements of the Daily Market Complex Building. The Daily Market Complex Building is a public Building, which is visited by the common public and hence it is recommended that the structure may be demolished and rebuilt taking into account the recommendations laid down in the IS 456:2000 for the durability, strength and seismic requirements."

4. Based on this Expert Body report, the respondent has called all the shop owners and furnished the copy of the report and suggested them to vacate the premises within a stipulated time. The petitioners at that point of time did not make any objections but however they have not vacated the premises. Therefore, the respondent has issued the present impugned notice. Aggrieved over the same, the present writ petitions are filed.

5. Mr. Srinath Sridevan, learned counsel appearing for the petitioners stated that the petitioners have entered into a lease agreement and as per the lease agreement, they are entitled to occupy shops till 2025 and also would submit that the condition of the building is not in such a dangerous position which necessitate demolition and reconstruction.

6. As per the earlier orders of this Court, the respondent Municipality has availed the services of IIT Madras Incubated

Company for assessing the condition and the stability of the structure and the Expert Body has also inspected the premises and recommended that this structure need to be demolished. This Court by earlier order dated 17.12.2020 while ordering for the verification through an Expert Body has also permitted the respondent Municipality that if the report points out that the building is in ruinous state and it will endanger lives, fresh notices shall be issued to lessees and the lessees shall be permitted to go through the report and decision has to be taken. As directed by this Court, it appears the respondent Municipality has also convened a meeting of the lessees on 25.01.2021 and furnished a copy of the Expert Report and thereafter issued these notices under Section 206 and 218 of the Tamil Nadu District Municipalities Act, 1920.

7. Admittedly, the condition of the building is not good and it is not feasible to use it as a public building. The Government has also considered the proposal of the respondent Municipality and has sanctioned for construction of new building with parking facilities also and therefore this Court is not inclined to interfere with the orders of the respondent. However, the learned counsel for the petitioner has made a request that the petitioners have made certain arrangements for the shops on the bonafide belief based on the lease agreement that they are entitled to occupy till 2025 and therefore they must be given sometime to vacate the premises. The learned Additional Advocate General appearing for the respondent Municipality has also agreed for the same on instructions from the respondent. However, the respondent has insisted for an undertaking affidavit from the petitioners.

8. Accordingly, The petitioners have also filed an undertaking affidavit which reads as follows;

"2. I have been advised that rather than needlessly litigating with the Lessor Municipality, it is better to amicably resolve the issue.

3. Accordingly, even though I have suffered very great loss during covid and even though I have a legal entitlement to have my lease until 03/2027, I agree and under take as follows:

3.1. That subject to the Municipality observing the covenants in Clause 3.2 and 3.3 below, I shall vacate and deliver possession of my shop No.01 at 11.59 PM on 02.06.2021.

3.2. Until such time, Municipality shall not interfere with my enjoyment of the shop or of the

access for my customers to reach the shop.

3.3. That as and when a new commercial complex comes up, and the shops are let out, I will have a right for first refusal to match the higher bid price, if any for the shop of my choice.

I pray that this Court be pleased to take note of the fact that even though I am poor man, I am making a large concession in the interest of Municipal development and I trust that the Municipality will act honestly in the matter."

Except the petitioner in W.P.No.4534 of 2021, all other petitioners have filed their affidavit of undertaking that they would vacate the premises on 02.06.2021.

9.Mr.Srinath Sridevan, the learned counsel for the petitioners submits that the petitioner in W.P.No.4534 of 2021 is now at Rajasthan and therefore, he is not in a position to file the Affidavit of undertaking within the time stipulated by this court, however, he would submit that the petitioner in W.P.No.4534 of 2021 has also undertook to abide by the conditions agreed by the other shop owners in the shopping complex.

10.The petitioners and respondents have mutually agreed that the petitioners shall occupy the premises till 31.5.2021 and vacate and hand over the premises on or before 2.6.2021. Accordingly, the writ petitions are disposed of with the following terms;

(i)Till 31.5.2021, the respondents shall permit the petitioner to carry on their business without affecting their ingress and egress to the petitioners and their customers to their shops.

(ii)Till 31.5.2021 or till the petitioners vacate, whichever is earlier, the petitioner is liable to pay lease rent to the Respondent Corporation.

(iii)The respondents shall proceed with the construction work in the remaining areas without affecting the petitioners business till 31.05.2021 and thereafter shall demolish and construct.

(iv)After the completion of construction, the respondent shall subject the building for public auction and the petitioners are also entitled to participate in the public auction on the terms and conditions of the auction and if the petitioners are agreeing for the highest bid amount, then preference has to be given to the petitioners in allotment of

the shops for the highest bid amount. and that shall also be incorporated as a condition in the Tender Notification.

(v)The petitioners will be entitled to this concession for only one shop.

11.On these above terms, these Writ Petitions are disposed of. No costs. Consequently, all the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mrm

To

The Commissioner,
Gobichettipalayam Municipality,
Gobichettipalayam, Tamil Nadu.

+15ccs to Mr.Srinath Sridevan, Advocate, S.R.No.17790 & 17791

W.P.Nos.4534, 4539, 4546, 2609,
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CS/17/04/2021



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