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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

WRIT PETITION NO.5956 OF 2021

A.Saravana Sampathkumar

..Petitioner

.Vs.

1. The District Collector
Erode District.

2. The Commissioner
Erode Municipal Corporation
Erode District.

3. Arulmozhi

4. P.M.Joseph

...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, to direct the 2nd respondent to demolish the old dilapidated building of the 3rd respondent bearing door No.252, Eswaran Koil Street bearing T.S No.91, 92, Ward No.33, Block-C, Erode Town, Erode under Section 327 of Coimbatore City Municipal Corporation Act by considering the representation dated 11.1.2021 within the time fixed by this Honourable Court.

For Petitioner :Mr.D.Raghu

For Respondents :Mr.A.Selvendran
Government Advocate
for R1

Mr.M.Rajamathivanan
Standing Counsel
for R 2

Mr.K.Kathiresan
for R 3

Mr.R.Mardhachalamurthy
for R 4



O R D E R

This writ petition has been filed for the issue of a writ of mandamus directing the 2nd respondent to act upon the representation made by the petitioner on 11.01.2021, wherein the petitioner had sought for the demolition of the subject property since it is in a dilapidated condition.

2.The case of the petitioner is that the adjacent building which is more than 80 years old is in a very dilapidated condition and it will crumble at any time. The petitioner is carrying on with some work in his property and since the adjacent property is in very bad shape, the petitioner thought that it may cause some danger to the person in occupation of the adjacent property. Therefore, the petitioner has made a representation to the Corporation, seeking for the demolition of the old dilapidated building. Since the same was not considered, the present writ petition has been filed before this court seeking for appropriate directions.

3.The 2nd respondent has filed a counter affidavit and in the counter affidavit, there is a specific averment to the effect that an inspection was carried out by the Engineers belonging to the respondent Corporation and it was found that the subject property is more than 80 years old and it is unfit for occupation.

4.The learned counsel appearing on behalf of the 3rd respondent, who is the owner of the property submitted that the property in question is in a very dilapidated condition and it requires immediate demolition, failing which, it will cause danger to the 4th respondent, who is in occupation of the same.

5. The learned counsel appearing on behalf of the 4th respondent submitted that the 4th respondent is the tenant under the 3rd respondent and the 3rd respondent initiated rent control proceedings for evicting the 4th respondent and the same was dismissed by an order dated 06.12.2019 and an appeal has been filed by the 3rd respondent and the same is pending in RCA.No.06 of 2020. The learned counsel further submitted that the 4th respondent has also filed a suit in O.S.No.459 of 2017, before the District Munsif Court, Erode, seeking for the relief of permanent injunction against the 3rd respondent and the same is pending before the Civil Court concerned. By pointing out to all these proceedings, the learned counsel for the 4th respondent submitted that the 3rd respondent is using the petitioner to get the 4th respondent evicted from the property and there is absolutely no bona fides on the part of the petitioner to file the present writ petition and this writ



petition is liable to be dismissed on that ground alone.

6.This court has carefully considered the submissions made on either side and the materials available on record.

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7.It is an undisputed fact that the 4th respondent is a tenant under the 3rd respondent. There are proceedings pending between the 3rd and 4th respondents and the 3rd respondent has already initiated action to evict the 4th respondent from the subject property. Under these circumstances, the petitioner, who is the adjacent owner seems to have made a representation to the Corporation stating that the adjacent building is in a dilapidated condition and it requires immediate demolition.

8.The Corporation has also taken a stand to the effect that the building in question is more than 80 years old and it is in a very bad condition and it may crumble at any time.

9.The 4th respondent is aware about the condition of the building and is actively contesting the case against the 3rd respondent, who sought for the eviction of the 4th respondent from the subject property. This court does not want to go into the fact as to whether the petitioner was actually set up by the 3rd respondent to get the 4th respondent evicted from the subject property.

10.The fact remains that the petitioner wants to carry out some work in his property. There is no objection from any quarters for the petitioner to carry on with his work. The apprehension of the petitioner is that while carrying on with the work, if any untoward incident takes place in the adjacent building which is said to be in a dilapidated condition, he should not be made responsible.

11.The petitioner has taken all steps to ensure that when any work is done in his property, any untoward incident should not be put against him. The condition of the building has also been taken note of by the respondent Corporation as well as the 4th respondent, who is in occupation of the same as a tenant. Therefore, the petitioner has taken all precautions and it is up to the 4th respondent to take a call and not to blame the petitioner for any untoward incident that may or may not happen.

12.In view of the above, it is left open to the petitioner to proceed further with the work in his property and it is also made clear that the petitioner will not be made responsible for any consequences arising therefrom. The petitioner shall carry on with the work in his property by



following all the safety norms. It will be enough if this clarity is given by this court to ensure that the petitioner is not stopped from enjoying his property.

13.This writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

KP

To

1. The District Collector
Erode District.
2. The Commissioner
Erode Municipal Corporation
Erode District.

+1cc to Mr.D.Raghu, Advocate, S.R.No.45349
+1cc to Mr.R.Mardhachalamurthy, Advocate, S.R.No.45312
+1cc to the Government Pleader, S.R.No.45529

Writ Petition No.5956 of 2021

NR(CO)
PM/28/09/2021