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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2021

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.12748 of 2021 and
W.M.P.No.13542 of 2021

1.Umesh Kumar Gupta
2.Kamruddin Abbas Moaiyadi ... Petitioners

Versus

1. The Commissioner of Police,
   Coimbatore City,
   Coimbatore.

2. The State,
   Rep by its, The Inspector of Police,
   Race Course Police Station,
   Coimbatore.

3. J.Elizabeth
4. S.Jyothi Prakash ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the respondent Nos.1 & 2 to grant sufficient police protection to the petitioners for demolition of their dilapidated building comprised in T.S.No.1/495 Part, New T.S.No.647/2, 648, 649 Part situated at Door No.952, Block No.10, Ward No.A, Old Ward No.5/New Ward No.7, Avinashi Road, Coimbatore by considering their representation dated 16.2.2021.

For Petitioners : Mr.K.Myilsamy

For R1 & R2 : Mr.A.Damodaran
Government Advocate (Crl. Side)

ORDER

This Writ Petition has been filed to direct the respondents 1 & 2 to grant sufficient Police protection to the petitioners for demolition of their dilapidated building comprised in T.S.No.1/495 Part, New T.S.No.647/2, 648, 649 Part situated at Door No.952, Block No.10, Ward No.A, Old Ward No.5/New Ward

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No.7, Avinashi Road, Coimbatore by considering their representation dated 16.2.2021.

2.The petitioners are the absolute owner of the land and building measuring to the extent of 30 cents comprised in T.S.No.1/495 Part, New T.S.No.647/2, 648, 649 Part situated at Door No.952, Block No.10, Ward No.A, Old Ward No.5/New Ward No.7, Avinashi Road, Coimbatore. The building was constructed prior to ninety years and now, the present condition of the building is dilapidated and ramshackle. Noting unsteadiness condition of the building, the Commissioner, Coimbatore City Municipal Corporation issued a notice under Section 327 of the Coimbatore City Municipal Corporation Act, 1981, directed the petitioners to demolish the building within 24 hours vide proceedings in Na.Ka.No.2990/2017/MH5, dated 27.11.2020. The petitioners are ready to demolish the dilapidated building. The respondents 3 and 4 who are the tenants refusing to vacate the premises. Due to which, the petitioners are unable to demolish the building which is causing danger to the public safety. The petitioners made representation to the 2nd respondent on 16.02.2021 seeking Police protection to carry out the demolition as per the notice of the Commissioner, Coimbatore City Municipal Corporation and the same was not acted upon. Hence, the petitioners have filed the present Writ Petition.

3.The learned counsel for the petitioners filed the typed set of papers, wherein they enclosed the notices dated 27.11.2020 and 19.11.2020 issued by the Commissioner, Coimbatore City Municipal Corporation, Coimbatore under Section 327 of the Coimbatore City Municipal Corporation Act, 1981; a plaint copy of the suit in O.S.No.1139 of 2020 pending between the respondents 2 & 3 and the petitioners, the Commissioner, Coimbatore Corporation, Town Hall, Coimbatore before the learned District Munsif, Coimbatore; Engineers and Valuers report dated 01.03.2021, wherein the building needs to be demolished without any further delay has been reiterated and the photographs of the building have been annexed.

4.The learned Government Advocate (Crl. Side) appearing on behalf of the respondents 1 and 2 submitted that from the notice issued by the Commissioner, Coimbatore City Municipal Corporation, Coimbatore, it is seen that the petitioners are tenants in the building who are carrying on the business. The notices were issued under Section 327 of the Coimbatore City Municipal Corporation Act, 1981 is to check the building in case of dangerous structures. From the plaint copy in O.S.No.1139 of 2020, it is seen that the respondents 3 and 4 are the plaintiffs who are running the business for the past 28 years and they are the tenants under the previous owner namely V.Vellingiri Chettiar and the total area rented out was about 600 sq.ft and

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till date they had spent more than Rs.10 lakhs to preserve the stability of the building and laid concrete on the roof and the same was done with the knowledge of the previous owner late V.Vellingiri Chettiar. The said Vellingiri Chettiar informed that due to financial crisis, he had sold the suit property to the petitioners and the tenancy to be continued and Rs.20 lakhs will be paid by the petitioners in case if the respondents 3 and 4 wanted to vacate the premises and from then onwards the monthly rent was fixed as Rs.15,000/-. The petitioners are also doing business in the adjoining premises in D.No.952. On 19.11.2020, some officials from the 1st respondent had visited the premises and posted a notice at the instigation of the petitioners to clear the unused wall and debris dumped on the roof top of the rented premises within 15 days. The contention of the respondents 3 and 4 in the suit is that the rented premises is in good condition and they invested more than 75 lakhs in their business and they are having widely reputed customers all round the place and more than 10 staffs are working under them. The sum and substance is that the respondents 3 and 4 are resisting the forceful vacation of the petitioners and the petitioners by using the old age of the building, are trying to vacate the respondents 3 and 4 despite the suit is pending before the civil Court.

5.On considering the rival submissions and on perusal of the materials, it is seen that the petitioners had purchased the property in the year 2018 and thereafter, they vacated all the other tenants except the respondents 3 and 4. Two notices dated 27.11.2020 and 19.11.2020 issued by the Commissioner, Coimbatore City Municipal Corporation, Coimbatore under Section 327 of the Coimbatore City Municipal Corporation Act, 1981. The notice is for precaution in case of dangerous structures. On inspection if the municipal authorities found that the building is unfit for human habitation, notice has to be given under Section 344 of the Coimbatore City Municipal Corporation Act, 1981. The stability report dated 01.03.2021 is only on visual inspection and no Engineer conducted test. Further, there is a civil suit is pending between the parties. In view of the same, as rightly submitted by the learned Government Advocate (Crl. Side), 16.02.2020, representation of the petitioner cannot be acted upon.

6.The citation referred by the learned counsel for the petitioners in the case of "Shajahan Versus The Commissioner, Corporation of Coimbatore, Coimbatore in W.P.No.8887 of 2018, dated 26.04.2021" is not relevant to the facts of this case.

7.In view of the above, this Court finds that it is for the municipal authorities to inspect the building and issue proper notice for demolishing the building, if such is the condition.

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In this case, the notices are issued only for clearance of debris in the building. Hence, this Writ Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vv2

To

1. The Commissioner of Police,
   Coimbatore City,
   Coimbatore.

2. The Inspector of Police,
   Race Course Police Station,
   Coimbatore.

3. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.K.Myilsamy, Advocate, S.R.No.31256

W.P.No.12748 of 2021

CNR(CO)
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