

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.03.2021

Coram

The HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.No. 11438 of 2020
and W.M.P.Nos.13952 and 13953 of 2020

M/s.Sridevi Chemicals
reo, by its Proprietor E.Madasamy .. Petitioner

vs

1.The Regional Deputy Commissioner
(North), Greater Chennai Corporation,
Zone 5, Royapuram, Chennai.
2.Mohamed Jinnah
3.M.Zeenathunnissa
4.Haja Nawsath Ali
5.J.Mohamed Ameen ... Respondents

(R2 to R5 impleaded vide order
dated 05.09.2020 made in
W.M.P.No.14581 of 2020 in
W.P.No.11438 of 2020)

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent's order dated 18.03.2020 in No.Z.O.5C.No./3077/2020 and quash the same as illegal.

For Petitioner : Mr.N.Krishnamurthy
For Respondents : Mrs.Karthika Ashok
Standing Counsel for R1
Mr.P.Muthamizh Selvakumar
for 2 to R5

ORDER

Challenging the notice dated 18.03.2020 issued by the first respondent, directing the petitioner to repair or demolish the building in question, which is in a dilapidated condition, the present writ petition has been filed.

2.It is the case of the petitioner that he is running his business in the building in question for the past thirty years.

While so, on 18.03.2020, the first respondent affixed the impugned notice under Section 258 of the Chennai City Municipal Corporation Act on the wall of the petitioner's shop. After the lockdown, the petitioner opened his shop and in the first week of August, 2020, the petitioner was informed to vacate the building by the Corporation or else they will demolish it. Apart from that, rent control proceedings were initiated before the Court of Small Causes by some third party and the same is pending. The grievance of the petitioner is that he has given representation on 10.10.2020 and without considering the same, the corporation is trying to evict him from the premises unlawfully. Hence he has approached this Court with the abovesaid prayer.

3.The first respondent has filed a counter affidavit dated 15.10.2020 and the relevant portion reads as under:

"5. It is submitted that this Respondent Corporation in its regular and routine inspection of the Area had found the subject building to be in bad condition, hence on 04-12-2019, the Property was inspected and on its conclusion and satisfaction that the Property is in dangerous condition this Respondent had issued the notice to fence off/take down/secure/ repair or demolish the Building U/s.258 of the CCMC Act IV of 1919. For the convenience Sec.258 is extracted hereunder:-

"258. Precaution in case of dangerous structure - (1) If any (structure) be deemed by the Commissioner to be in a ruinous state or dangerous to passers-by or to the occupiers of neighbouring structure, the commissioner may, by notice, required 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 387.

(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."

From the above reading it is clear that, the opinion of the Commissioner or the delegate and on his satisfaction may issue the notice and particularly the Notice issued is for fence off, take down, secure, repair or demolish U/s.258 of the CCMC Act IV of 1919 and so the owner is to act in accordance with the notice calling for to repair or fence off had not been carried out, this Respondent as stipulated in the Act can order for evacuation.

6. It is submitted that the Statement of the petitioner that the Officials of this Respondent Corporation is forcing the Petitioner to evict the premises is false and baseless, it is totally denied and the Petitioner is put to strict proof of the same. As per the Authority empowered under the CCMC Act, 1919 the Notice under Section 258 is issued in the interest of public and in a precautions manner to safeguard the public and inmates of the Building."

4.Learned counsel for the petitioner disputed the same by taking a plea that the corporation has issued the notice at the instance of the land owner to evict the petitioner without following due process of law.

5.In order to ascertain the real condition of the building in question, this Court, by order dated 05.02.2021, appointed Mr.N.Senthilkumar as Advocate Commissioner to inspect the building in question with the help of a competent civil engineer of his choice in the presence of the parties viz., land owner and tenant.

6.Pursuant to the order, the Advocate Commissioner inspected the building in question along with the registered civil engineer in the presence of the counsel for the private respondents, official of the first respondent corporation, employee of the petitioner's shop and son-in-law of the landlord. The relevant portion of the Advocate Commissioner's report reads as under:

"4. I submit that the petitioner is occupying the ground floor and carrying on his business in the name and style M/s.Sridevi Chemicals. the ground floor and first floor are constructed with madras terrace and the third floor with RCC (Reinforced Cement Concrete). The building is more than 80 years old.

5.I respectfully submit that the cracks are glaringly visible on the side walls and also at the roof level on each of the first and second floors. The wooden reapers placed in the madras terrace were worn out due to its age and normal wear and tear. in most of the places the wooden reapers were eaten by termites and precariously hanging. the wooden reapers in first floor is broken and the roof seen hanging without any support and on the verge of collapse.

6.I submit that the roof in second floor is very weak and due to corrosion, the cement mortar has peeled off. The bonding between the iron rod and concrete were loose, weak and seen peeled off while walking up the staircase.

7.I submit that the First floor and Second floor rooms were dumped with waste materials. There is no ventilation and lighting facility. The rooms in the First floor and Second floor are unhygienic with bad odour emanating from within.

8. I respectfully submit that on the whole the building is structurally weak and unfit for habitation. Moreover, I submit that there is every danger of the building collapsing at any point of time, which may not only affect the inmates but also may cause grave risk to the general public at large.

9.I submit herewith some images captured at the building site for perusal of this Court.

10.I submit the detailed report of the Registered Civil Engineer for perusal of this Court."

7.This Court considered the submissions made by the learned counsel for the parties and perused the counter as well as the report of the Advocate Commissioner.

8.A perusal of the Advocate Commissioner's report clearly shows that the building in question is more than 80 years old, very weak and it is unfit for habitation. The engineer, who inspected the building also opined that the building is in a very dilapidated condition and is withstanding through the support of adjoining building and it should be demolished at the earliest in order to prevent any untoward incident.

9.In view of the above, this Court is of the view that the building in question is in a very dangerous condition. Therefore, the petitioner is directed to vacate the building in question within a period of thirty days from the date of receipt

of a copy of this order.

10.With the above observation and direction, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mmi

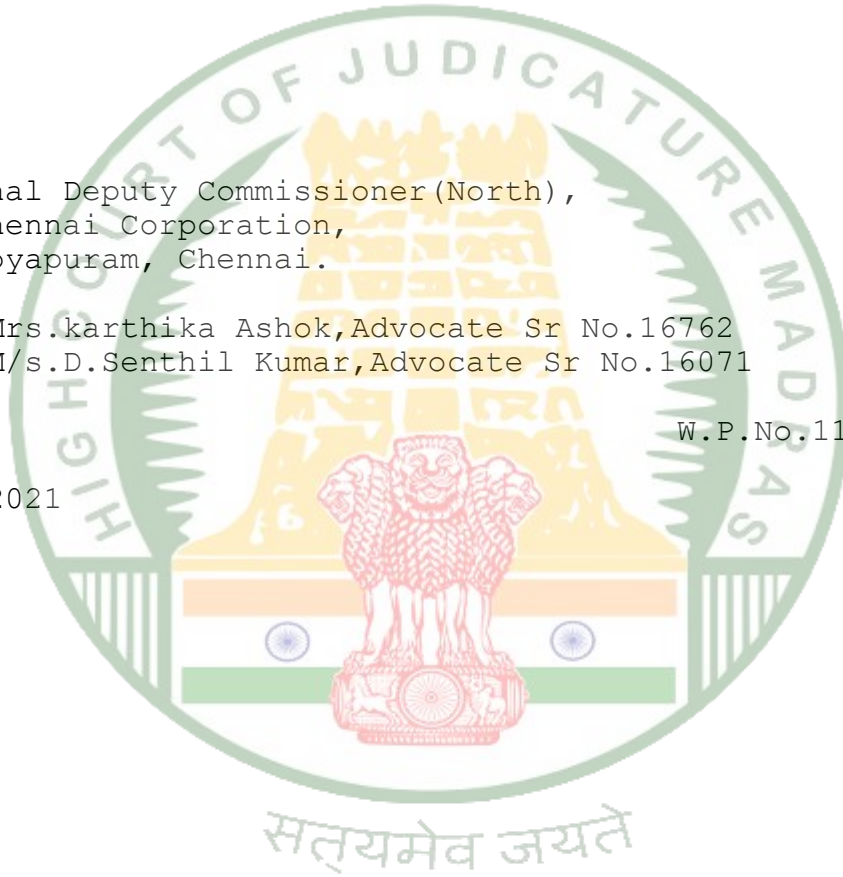
To

The Regional Deputy Commissioner(North),
Greater Chennai Corporation,
Zone 5, Royapuram, Chennai.

+1 cc to Mrs.karthika Ashok,Advocate Sr No.16762
+2 cc to M/s.D.Senthil Kumar,Advocate Sr No.16071

W.P.No.11438 of 2020

PL(CO)
RG.21.04.2021



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