

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2021

CORAM :

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

W.P.No.16949 of 2020
and
W.M.P.No.21040 of 2020

S.Abdul Samad ... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Housing and Urban Development,
Secretariat, Chennai - 600 009.
- 2.The Additional Secretary (Technical)
Housing and Urban Development,
Secretariat, Chennai - 600 009.
- 3.The Member Secretary,
Chennai Metropolitan Development Authority,
Enforcement Cell,
Thalamuthu - Natarajan Building,
No.1, Gandhi Irwin Road, Egmore,
Chennai - 600 008.
- 4.The Commissioner,
Greater Chennai Corporation,
Rippon Buildings, Chennai - 600 003.
- 5.The Assistant Executive Engineer,
Greater Chennai Corporation,
2nd Cross Street (East), Pulla Avenue,
Shenoy Nagar, Chennai - 600 030.

6.M.Gnanavel ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus forbearing the respondents herein from taking coercive action in pursuant to the Notice issued by the 5th respondent herein in his proceedings in Notice No. Zone- VIII/ TPENF/ 0056/ 2020

dated 06.10.2020 pending disposal of the statutory Appeal dated 13.10.2020 filed by petitioner under section 80 (A) of Tamil Nadu Town and Country Planning Act 1971 before the 2nd respondent herein.

For Petitioner : Mr.S.Sathish Rajan

For R1 and R2 : Mr.R.Vijayakumar
Additional Government Pleader

For R4 and R5 : Mr.M.Ganesan
Standing Counsel

For R6 : Mr.G.Vijayakumar

O R D E R

(Order of the Court was made by M. SATHYANARAYANAN, J.)
(Through Video Conferencing)

The petitioner is the tenant under the 6th respondent and challenging the notice, dated 06.10.2020, issued by the 5th respondent, under Sections 56 and 57 r/w. 85 of the Tamil Nadu Town and Country Planning Act, 1971, he has filed the present writ petition, forbearing the respondents from taking coercive action pursuant to the notice, dated 06.10.2020, till the disposal of the statutory appeal, dated 13.10.2020, filed under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971.

2.The writ petition was listed for admission on 03.12.2020 and it was pointed out that the petitioner, being the tenant under the 6th respondent in respect of the premises/superstructure owned by the 6th respondent, cannot claim any better right than the landlord, and at that juncture, it was represented by the learned counsel for the petitioner, on instructions, that if some breathing time is given, he will hand over the premises in favour of the 6th respondent, and accordingly, the matter was adjourned to 22.12.2020. The learned counsel for the petitioner, on the said date of hearing, undertook to file an affidavit of undertaking, after serving a copy upon the learned counsel for the 6th respondent, and therefore, the matter was adjourned to today, under the caption "For orders".

3.The petitioner has filed the affidavit of undertaking, dated 06.01.2021, and it is relevant to extract Para Nos.4 and 5 of the same :

"4.I respectfully submit during the pendency of

the appeal the corporation of Chennai has taken coercive steps to give effect to the lock and seal notice. Hence I have filed the present Writ Petition. It is submitted that the business from the subject shop is the only source of my income. I am carrying on business for the past 20 years in the subject property. If the shop premises are sealed, my business will be ruined and I and my family will be put to untold suffering. I am searching for a suitable shop in the same locality so that I can vacate the premises peacefully and continue the business in the new premises. I require six month time to find a suitable shop for continuing my business.

5.I hereby undertake to vacate and handover the possession to the 6th respondent or to the 5th respondent as directed by this Hon'ble Court. Unless six month time is granted to vacate and to hand over the possession of the shop premises, I will be put to untold suffering and hardship."

4.The learned counsel appearing for the petitioner would submit that, if six months' time is granted, he would vacate and deliver the vacant and peaceful possession of the premises in his occupation in favour of the 6th respondent. The learned counsel appearing for the 6th respondent would submit that, in Para No.3 of the affidavit, the petitioner has also gone into the other factual aspects, and in the light of the undertaking given in Para Nos.4 and 5 of the affidavit, coupled with the fact that the premises is also dilapidated and tumbling, this Court may pass appropriate orders.

5.This Court also heard the submissions of Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondents 1 and 2, and Mr.M.Ganesan, learned Standing Counsel, appearing for the respondents 4 and 5.

6.The affidavit of undertaking, dated 06.01.2021, filed in USR No.946/2021 is taken on file and recorded. The petitioner is granted six months' time from today to vacate and deliver the vacant and peaceful possession of the premises at Ground Floor, Shop No.1, T Block, 4th Main Road, Anna Nagar, Chennai - 600 040, in favour of the 6th respondent. It is made clear that, till the possession is handed over, the petitioner shall not create any third party rights in respect of the premises in question and shall continue to maintain the premises in good condition. In the light of the submission made by the learned counsel appearing for the 6th respondent as to the dilapidated structure of the premises, if the premises collapses due to the act of God, the 6th respondent shall not be held liable. The petitioner shall also continue to pay the rent regularly in favour of the

6th respondent till such time. The landlord is at liberty to demolish the other portions of the premises without causing damage to the portion in occupation of the petitioner till he vacates and delivers vacant possession in the light of the present affidavit of undertaking.

This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
State of Tamil Nadu,
Housing and Urban Development,
Secretariat, Chennai - 600 009.
 2. The Additional Secretary (Technical),
Housing and Urban Development,
Secretariat, Chennai - 600 009.
 3. The Member Secretary,
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Rippon Buildings, Chennai - 600 003.
 5. The Assistant Executive Engineer,
Greater Chennai Corporation,
2nd Cross Street (East), Pulla Avenue,
Shenoy Nagar, Chennai - 600 030.
- +1 cc to M/s. M.Ganesan, Advocate Sr.No. 3077
+1 cc to M/s. G.Vijayakumar, Advocate Sr.No. 2309
+1 cc to The Government Pleader, Sr.No. 2761

W.P.No.16949 of 2020

AD(CO)
RMP(18/02/2021)