

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.20235 & 20236 of 2020
and WMP.Nos.25023,25024,24015, 25016 & 25017

W.P.No.20235 of 2020

1.C.Shyamala
2.Rajesh

... Petitioners

vs.

1.The Commissioner,
Coimbatore Corporation,
Coimbatore.

2.G.G.Ramalingam

3.Gowri Ramakrishnan

... Respondents

W.P.No.20236 of 2020

R.Balasubramanian

.. Petitioner

vs.

1.The Commissioner,
Coimbatore Corporation,
Coimbatore.

2. K.Ramakrishnan

3. Gowri Ramakrishnan

.. Respondents

Prayer in W.P.No.20235 of 2020 Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in Ref.No.3528/2020/H1/10 dated 04.12.2020 and quash the same consequently direct the 1st respondent to consider the petitioner's representation dated 17.12.2020 within time limit fixed by this Court.

Prayer in W.P.No.20236 of 2020 Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in Ref.No.3528/2020/H1/10 dated 04.12.2020 and quash the same consequently direct the 1st respondent to consider the petitioner's representation dated 07.12.2020 within time limit fixed by this Court.

In Both the Cases	
For Petitioner	: Mr.R.Gopalakrishnan
For R1	: Mr.Aruldoss
For R2 & R3	: Mr.P.K.Rajagopal

C O M M O N O R D E R

1. After hearing the learned counsel for the petitioners and the private respondents and the official respondent, these writ petitions are being disposed.

2. The petitioners have challenged the order passed by the first respondent, Commissioner under Section 327 of the Coimbatore City Municipal Corporation Act, 1981.

3. By the impugned order, it is clearly stated that the building in which, the petitioners are carrying on the business as vendors is in a dilapidated dangerous conditions and therefore directed the private respondents to take steps to demolish the same, failing which, consequence under Section 478 of the said Act, await steps.

4. The challenge in the present writ petitions is primarily on the ground that the petitioners have filed O.S.No.874 of 2020 before the II Additional District Munsif, Coimbatore for a permanent injunction against the private respondents 2 and 3 and the petitioners have also moved I.A.No.2 of 2020 for injunction and that suppressing the above suit, the private respondents have approached the 1st respondent for demolishing the above said property.

5. Opposing the prayer, the learned counsel for the official respondent and the private respondents herein submitted that the building is indeed in a dangerous conditions and therefore the orders have been passed under Section 327 of the Coimbatore City Municipal Corporation Act, 1981. It is further submitted that if the private respondents failed to take steps, they will be liable to consequence under Section 478 of

the said Act. It is submitted that the building is not in a dilapidated condition. The petitioners can approach the Appellate Authority under the provisions of the Coimbatore City Corporation Act, 1981. Section 452 of the Act reads as under:

— (1) An appeal shall lie to the Standing Committee or if no such Committee has been constituted to the Council from

(a) any notice issued or other action taken or proposed to be taken by the Commissioner -

(i) under sections 162, 210, 218, 219, 220, 222, 223 (2), 282, 296(3), 327(1), 328(1), 333(1), 334, 338, 343, 353, 354, or 362;

(ii) under any by-law concerning house drainage or the connection of house drains with Municipal drains, or house connections, with Municipal water-supply or lighting mains;

(b) any refusal by the Commissioner to approve a building site under section 275 to grant permission to construct or reconstruct building under section 276 or 290.

(c) any refusal by the Commissioner to grant a permission under sections 159, 213 or 331; (d) any refusal by the Commissioner to grant a license under sections 352, 360, 372, 377 or 382(2);

(e) any order of the Commissioner made under sub-section (4) of section 451 suspending or revoking a license;

(f) any other order of the Commissioner that may be made appealable by rules under section 430.

(2) Every such appeal shall be disposed of by the Standing Committee or, as the case may be, by the Council within one month from the date of its receipt in the Municipal office, and if not disposed of within that time, shall be transmitted by the Commissioner to such Officer for disposal as may be specified by the Government, by order.

(3) The decision of the Standing Committee or the Council or the Officer specified under sub-section (2), as the case may be, on any such appeal shall subject to the provisions of sub-sections (4) and (5) be

final.

(4) If, on any such appeal, the Standing Committee reverses or substantially modifies any action taken or proposed to be taken by the Commissioner or any order passed by him, then, the Commissioner may within one month from the date of such decision refer the matter to the Council and pending the decision of the Council, on such reference, the Commissioner shall not be bound to give effect to the decision of the Standing Committee; and the Council shall be competent to reverse or modify the decision of the Standing Committee; and the decision of the Council on any such reference shall, subject to the provisions of sub-section (5), be final.

(5) The Government may, at any time, call for and examine the records relating to any such appeal, and pass such orders as they deem fit.

6. Orders passed under Section 327 is a specifically covered under Section 452 (1)(a) (i) of the said Act. The petitioners have an alternate remedy before the Appellate Authority. Therefore, there is no merits in the present writ petitions.

7. In view of the above, these writ petitions are dismissed with liberty to the petitioners to file an appeal under Section 452 of the Coimbatore City Municipal Corporation Act, 1981, within a period of 15 days from the date of receipt of a copy of this order. The respondents shall await for a period of 30 days thereafter before proceeding further to facilitate the petitioners to produce any interim order that may be granted to the petitioners in the proposed appeal under Section 452 of the Coimbatore City Municipal Corporation Act, 1981. In case, no such appeal is filed and no interim order is produced, the first respondent is at liberty to take steps to proceed further. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kkd

To

The Commissioner,
Coimbatore Corporation,
Coimbatore.

+2 ccs to Mr.P.K.Rajagopal, Advocate Sr.NO. 40175,40174

+2 ccs to Mr.B.Kumarasamy, Advocate Sr.NO. 10303,40301

W.P.Nos.20235 & 20236 of 2020

RSV(CO)

A.SK(18/07/2022)