



WEB COPY



W.P. No. 23614 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 23614 of 2021

and

W.M.P. No. 24855 of 2021

M/s. Elmech Equipment Company,
Rep. by its Managing Partner,
Mr. S.Jyothi Prakash,
Door No. 8/952, Avinashi Road,
Coimbatore – 641 018.

... Petitioner

-VS-

1. The Commissioner,
Coimbatore Corporation,
Town Hall,
Coimbatore – 641 001.

2. Kamrudeen Abbas Moaiyadi

3. Umesh Kumar Gupta

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records, viz., notice dated 25.10.2021 issued by the First Respondent and quash the same.

For Petitioner : Mr. A.S.Baalaji

For Respondents : Mr. K.Magesh (for R1)

Mr. K.Mayilsamy (for R2 and R3)

Mr. J.Ramesh,
Advocate Commissioner



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ORDER

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Heard Mr. A.S.Baalaji, Learned Counsel for the Petitioner, Mr. K.Magesh, Learned Counsel for the First Respondent, Mr. K.Mayilsamy, Learned Counsel for the Second and Third Respondent and Mr. J.Ramesh, Learned Advocate Commissioner and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is tenant of the Second and Third Respondents in respect of building situated at Ward No. 72, Door No. 952, Avinashi Road, Coimbatore - 641018 has filed this Writ Petition challenging the proceedings dated 25.10.2022 passed by the First Respondent in the exercise of powers under Section 327 and 344 of the Coimbatore City Municipal Corporation Act, 1981 (hereinafter referred to as 'the Act' for short).

3. At this juncture, it would be necessary to extract Sections 327 and 344 of the Act, which read as follows:-

" 327. Precautions in case of dangerous structures.

(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



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neighbouring structures, the Commissioner may, by notice, require the owner or occupier to fence off, take down, secure or repair such structure so as to prevent any danger there from.

(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 478.

(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.

344. Buildings unfit for human habitation.

(1) If any building or portion thereof, intended for or used as a dwelling-place appears to the Commissioner to be unfit for human habitation, he may apply to the Standing Committee to



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prohibit the further use of such building for such purpose and the Standing Committee may, after giving the owner and occupiers thereof a reasonable opportunity of showing cause why such order should not be made, make a prohibitory order as aforesaid.

(2) When any such prohibitory order has been made, the Commissioner shall communicate the purport thereof to the owner and occupiers of the building and on expiry of such period as is specified in the notice, not being less than thirty days after the service of the notice, no owner or occupier shall use or suffer it to be used for human habitation until the Commissioner certifies in writing that the causes rendering it unfit for human habitation have been removed to his satisfaction or the Standing Committee withdraws the prohibitory order.

(3) When such prohibitory order has remained in operation for three months the Commissioner shall report the case to the Standing Committee which shall thereupon consider whether the building should not be demolished; the Standing Committee shall give the owner not less than thirty days notice of the time and place at which the question will be considered and the owner shall



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be entitled to be heard when the question is taken into consideration.

(4) If upon such consideration the Standing Committee is of opinion that the building has not been rendered fit for human habitation and that steps are not being taken with due diligence to render it so fit and that continuance thereof is a nuisance or dangerous or injurious to the health of the public or to the inhabitants of the neighbourhood, it shall record a decision to that effect, with the grounds of the decision, and the Commissioner shall in pursuance of the said decision, by notice, require the owner to demolish the building.

(5) If the owner undertakes to execute forthwith the work necessary to render the building fit for human habitation and the Commissioner considers that it can be so made fit, the Commissioner may postpone the execution of the decision, of the Standing Committee for such time not exceeding six months, as he thinks sufficient."



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It is evident on a plain reading of the aforesaid statutory provisions that though an interim measure for evacuation of the inmates of a building could be taken by the Commissioner of the Corporation when its structure is in imminently dangerous condition, the ultimate decision for declaring a dwelling place as unfit for human habitation and its eventual demolition could be taken only by the Standing Committee of the Corporation. It is not in dispute that the decision for demolition of the building in the present case has been taken by the Commissioner and not by the Standing Committee of the Corporation. It is explained by Learned Counsel for the First Respondent that at the relevant point of time, the Council and the Standing Committee of the Corporation were not functional and the Commissioner of the Corporation was appointed as the Special Officer to discharge the functions of the Council in G.O. (Ms) No. 147, Municipal Administration & Water Supply (Elections) Department dated 24.10.2016. Though a report dated 15.09.2021 from the Professor of Civil Engineering, Government College of Technology, Coimbatore – 641013 has been produced in which it has been recommended to demolish the building for the structural damages, there is no reference to such inspection in the impugned order. The Advocate Commissioner, viz., Mr. J.Ramesh, who had inspected the property on 25.11.2021 in furtherance to the order passed on 01.11.2021, has given a divergent version in his report dated 29.11.2021, which reads as follows:-



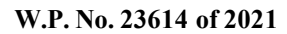
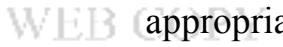
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“ *Based on the inspection conducted on 25.11.2021, it is observed that the act constituted by the Second and Third Respondents resulted in damaging the ceiling in ground floor portion. It is pertinent to point out that non-maintenance of the said building paved way to distress and vegetation in the first floor as a result they were force to demolish the first floor, but otherwise the walls and (load bearing walls) RCC ceiling are stable.*

In my view that the act attributed by the Respondents shows arbitrariness, unfair practice and unlawful by nature. Prima facie violation is made out with regard to the damages observed in the ground floor portion of the disputed shop. The subject building is not in a dilapidated condition. Therefore such act requires constitutional justification.”

It is not possible for this Court following the summary procedure in a proceeding under Article 226 of the Constitution to delve into such factual disputes in order to resolve the same one way or the other.

4. Inasmuch as it is now represented that after elections to the Council to the



5. In the result, the Writ Petition is ordered on the aforesaid terms.

Consequently, the connected Miscellaneous Petition is closed. No costs.

skr

Index: Yes/No

Note: Issue order copy by 04.01.2023.

To

The Commissioner,
Coimbatore Corporation,



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Town Hall,
Coimbatore – 641 001.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai – 600 104.



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P.D. AUDIKESAVALU, J.

skr

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