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W.P.No.33623 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2022

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THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No. 33623 of 2022
and W.M.P.No.33079 of 2022

Sebastian Paul Sankaran B

.. Petitioner

Versus

1.The Commissioner
Greater Chennai Corporation
Park Town, Chennai - 600 003

2.The Executive Engineer
Zone - 9, Greater Chennai Corporation
Nungambakkam, Chennai - 600 034

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the impugned notice of the second respondent in ம.அ.9.ந.க.எண்.உ.பொ/கோ.122/2022/1 dated 01.12.2022 and quash the same.

For Petitioner : Mr.B.Mohan

For Respondents : Mr.D.B.R.Prabhu



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ORDER

This Writ petition has been filed challenging the impugned notice issued by the second respondent in ம.அ.9.ந.க.எண்.உ.பொ/கோ.122/2022/1 dated 01.12.2022, quash the same.

2. The case of the petitioner is that originally the flat bearing No.K-11 at Turnbolls Road was allotted to the father of the petitioner by the Tamil Nadu Housing Board during the year 1969, i.e., on 27.03.1969 and consequently, sale deed was also executed on 16.02.1982 bearing Doc.No.331/1982 on the file of the SRO, Mylapore. Ever since the said allotment, the petitioner along with his family members are residing in the subject flat. The father of the petitioner died on 03.03.1993. Thereafter, few of the neighbour residents residing in the K Block, in order to commercially exploit, jointly decided to demolish the existing flats and reconstruct the flats on the premise that it would greatly enhance the amenities, real estate value as well as the rental value. Initially, the petitioner had agreed to such proposal and executed a Power of Attorney on 10.01.2018 to three such flat owners namely Mr.K.Manimegalai, Mrs.Radha Muralidharan and N.Sakunthala. Thereafter, according to the petitioner, the power agents were



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said to have indulged in financial irregularities. Therefore, the petitioner along with his brothers sent a legal notice on 21.11.2022 cancelling the power of attorney dated 10.01.2018. Immediately, after receipt of the above notice, on 22.11.2022, the impugned notice dated 01.12.2022 has been issued by the second respondent on the premise that the flat is in dilapidated condition relying on the report obtained from Anna University at the behest of some of third party in order to vacate the petitioner from the subject flat.

3. According to the learned counsel for the respondents, the notice has been issued after obtaining the structural stability report from the Anna University as the building is not in a good condition and it is in dilapidated stage.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials placed on record.

5. On perusal of the entire proceedings, this Court is of the view that the notice impugned herein is issued in an hasty manner, particularly, when the Power of Attorney was cancelled and a legal notice has been issued by



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the petitioner on 22.11.2022, thereafter, the impugned notice dated 01.12.2022 has been issued by the respondent to vacate the petitioner from the subject flat.

6. Though the Respondent has the power to issue such notice under Section 258 of the Chennai City Municipal Corporation Act, 1919, this Court is of the view that before resorting to such procedure of issuing notice, the mandatory provisions of law has to be complied with.

7. Section 258 of the Chennai City Municipal Corporation Act, 1919 reads as follows:

"258. Precautions in case of dangerous structures.--- (1) If any structure is deemed by the commissioner to be in a ruinous state or dangerous to passers by or to the occupiers of 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 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 structure or fence off a party 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 to occupier in



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the manner provided in Section 387.

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(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."

8. On a plain reading of the above, it would contemplate that if any structures is deemed by the commissioner to be in a ruinous state or dangerous to passers by or to the occupiers of 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 therefrom. If immediate action is necessary to prevent accident, the commissioner may himself before giving such notice or before the period of notice expires fence off, take down, secure or repair structure or fence off a party of any street. 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.

9. It is not the case that the entire structure of the flats have become



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imminently dangerous. It transpires that the other flat owners jointly decided to develop the flats in order to commercially exploit. Initially, the petitioner had also agreed, however, due to alleged financial irregularities, the petitioner along with his brother cancelled the power of attorney on 21.11.2022, which was just one week prior to the issuance of impugned notice herein i.e., on 01.12.2022. The impugned notice has been issued as if the structural stability report has been obtained from the Anna University, therefore, this Court is of the view that the respondents without issuing any notice as stipulated under Section 258 of the Chennai City Municipal Corporation Act, 1919, the order directing eviction is bad in eye of law.

10. In such view of the matter, the impugned notice bearing ம.அ.9.ந.க.எண்.உ.பொ/கோ.122/2022/1 dated 01.12.2022 is hereby set aside. However, if at all the respondents wants to proceed further, a notice has to be issued under Section 258 of the Chennai City Municipal Corporation Act, 1919 for doing any repair and thereafter, find out whether the building is in such a dilapidated condition requiring immediate evacuation.



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11. In the above terms, this writ petition stands allowed. No costs.

Consequently, connected miscellaneous petition is closed. It is made clear that the respondent shall proceed further after giving notice to the petitioner as per the law.

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Index : Yes / No

Speaking Order : Yes / No

To

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N.SATHISH KUMAR, J.



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