



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 13.06.2022

ORDER PRONOUNDED ON : 20.06.2022

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CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P. (MD) .Nos.9745 and 10059 of 2021
and

WMP (MD) .Nos. 7447, 7448, 7449 7450,
7777, 7778 and 8343 of 2021

W.P (MD) .No.9745 of 2021

P.Manoharan

...Petitioner

Vs

1.The Commissioner
Corporation of Madurai
Anna Malligai
Madurai

2.The Assistant Commissioner
Corporation of Madurai Zone -3
Anna Malligai
Madurai

3.The Executive Engineer
TANGEDO
Theppakulam
Madurai

4.The Assistant Engineer
TANGEDO
Theppakulam
Madurai

5.Kasirajan

....Respondents

W.P (MD) .No.10059 of 2021

N.Nageswaran

...Petitioner

Vs



1.The Commissioner
Madurai Corporation
Madurai

2.The Assistant Commissioner
Zone No.3, Madurai Corporation
Madurai

3.Dr.S.Kasirajan

4.R.Kousalya

5.T.Nagajothi

6.A.Thiyagarajan Chettiar Respondents

(Respondents 4 to 6 are impleaded vide Court order dated 10.11.2021)

Prayer in W.P(MD).No.9745 of 2021: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the entire records pertaining to the impugned order passed by the second respondent vide his proceedings Ref: No.M3A4:/2438/2021 dated 26.05.2021, quash the same.

Prayer in W.P(MD).No.10059 of 2021: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the entire records pertaining to the impugned order passed by the second respondent in Ref: No.MTHI3/007654/2020 dated 07.05.2021 and the consequential order made by the second respondent in M3A4/2438/2021 dated 26.05.2021 and quash the same as illegal.

For Petitioner : Mr.Niranjana S.Kumar
in W.P.No.9745 of 2021

Mr.M.Ajmal Khan
Senior Counsel
For Mr.M.Mahaboob Athiff
in W.P.No.10059 of 2021

: Mr.A.R.L.Sundaresan
Senior Counsel
For Mr.J.Anandkumar for R5
in W.P.No.9745 of 2021
and for R2 & R3
in W.P.No.10059 of 2021

: Mr.R.Murali, Standing Counsel
for Madurai Corporation
in both petitions



For R4 to R6 : No appearance

COMMON ORDER

The petitioner in both the writ petitions are tenants who are running a restaurant and a sweet stall in the property belonging to one Kasirajan. Both the writ petitions have been filed challenging an order passed by the Madurai Municipal Corporation on 26.05.2021 under which the Corporation has granted permission for demolition of the buildings on the ground that the said buildings are damaged due to rain and they are in a dangerous condition likely to fall upon the general public.

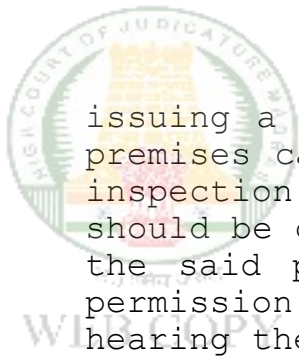
2.The learned Senior Counsel appearing for the writ petitioner has contended as follows:

(i). The petitioner in WP(MD).No.10059 of 2021 has taken the Door No.36, East Veli Street, Madurai on lease from one Kasirajan and he has been keeping the premises in good condition after carrying out repair and renovation works. Rent control proceedings were initiated by the landlord in RCOP.No.170 of 2007 on the file of the Rent Controller, Madurai seeking possession of the property on the ground of demolition and reconstruction. The said application was rejected on 17.09.2019.

(ii). The landlord having failed in his attempt to take possession of the property through the rent control proceedings, had approached the Municipal Authority under Section 327 of Madurai City Municipal Corporation Act 1971 and has requested them to pass an order granting permission for demolition of the building. According to the learned Senior Counsel, the said order has been passed as against one Manonmani who had passed away long back.

(iii). The learned Senior Counsel had further contended that the landlord has presented an application on 10.05.2021 and the same has been readily accepted by the Corporation and the impugned order has been passed on 26.05.2021 and on the same day, amount has been remitted by the landlord towards cost of demolition. The sequence of events will clearly show that the entire exercise is actuated by malice in law.

3.The learned Senior Counsel referred to a Division Bench Judgment reported in **2009 (6) CTC 623 (The Commissioner, Corporation of Chennai Vs. R.S.Vaideeswaran and others)** to impress upon the Court that without issuing a show cause notice to the tenant in possession of the property and without arriving at a specific finding that the structure is imminently dangerous to the inmates, any order passed by the Municipal Authority is not legally sustainable. The learned Senior Counsel had further relied upon another Division Bench Judgment reported in 2018 SCC SCC Online Madras 5010 (Manimegalai Vs. The Commissioner, Pudukkottai Municipality and others) to impress upon the Court that without

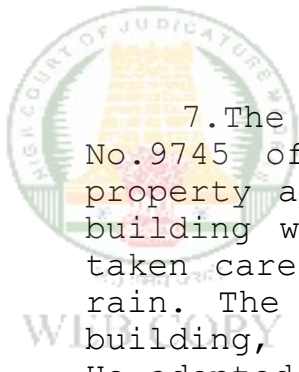


issuing a notice to the occupier and conducting an inspection, the premises cannot be sealed. He had further contended that a copy of inspection report should be given to the occupier and the remarks should be called for from the landlord and tenant. Without following the said process, the Madurai Corporation has proceeded to grant permission in favour of the landlord on a mere application without hearing the tenant or conducting any inspection.

4.The learned Senior Counsel further relied upon the judgment of this Court reported **in 2013- I- CWC- 723 (Rama Devi Vs. The Commissioner, Corporation of Chennai and others)** to impress upon the Court that where the rent control proceedings are pending, it is not permissible to the landlord to carry out the demolition of a building invoking the provisions of Municipal Laws. The learned Senior Counsel also relied upon a **judgment of Mr.Justice N.Kirubakaran in W.P.No.27658 of 2016(R.Subramanian Vs. The District Collector, Coimbatore and others)** dated 09.08.2016 to contend that if the building in dilapidated condition is occupied by the tenant, behind the back of the tenant, demolition order cannot be issued by the Municipal Corporation. The learned Senior Counsel further pointed out that in the said judgment, it has been held that where a special statute is available to safeguard the interest of the tenants as well as the landlords, the landlords cannot invoke the General Act as a short cut method.

5.The learned Senior Counsel further contended that when the attempt made by the landlord before the Rent Controller was not successful, the landlord resorted to invoke the public law remedy only to dispossess the tenant. When the Rent Controller had dismissed the application for demolition and reconstruction after arriving at a specific finding that the building is in a good condition and it does not require demolition and reconstruction, the Municipal Authorities have no jurisdiction whatsoever to arrive at a different finding. The learned Senior Counsel had further contended that in the light of the judgements cited supra, any order passed by the Municipal Authorities would be clearly in violation of principles of natural justice and the impugned order is liable to be set aside.

6.The learned Senior Counsel further contended that the tenant was not put on notice before an order was passed granting permission to the landlord to demolish the building. He had further contended that the jurisdiction conferred upon the Municipal Authorities is a conditional jurisdiction based upon the subjective satisfaction of the authorities with regard to the condition of the building. In the present case, no inspection was conducted by the Municipal Authorities before passing the impugned order. On the above said ground, the learned Senior Counsel prayed for setting aside the impugned order and to allow the writ petition.



7.The learned Advocate for the petitioner appearing in W.P(MD). No.9745 of 2021 had contended that he is in possession of the property as a lessee for many years. One of the shops in the said building was in possession of the landlord which was not properly taken care of by them. Only the said building had collapsed due to rain. The landlord taking advantage of the collapse of the said building, attempted to evict all the tenants in the said building. He adopted the submissions of the learned Senior Counsel in W.P(MD). No.10059 of 2021.

8.The contention of the learned Senior Counsel on the side of the private respondents:

(i).The learned Senior Counsel Mr.A.R.L.Sundaresan appearing for the landlord had contended that due to heavy rain, a portion of the building started to fall down during the morning hours on 04.05.2021. Immediately, the Corporation has issued notice to the landlord for demolition of all shops on 04.05.2021 itself. Hence, the landlord filed an application before the Madurai Corporation on 06.05.2021 seeking permission for demolition of the building apprehending that the building may cause danger to the inmates and the general public. The said fact was also published in a newspaper on 06.05.2021. Hence, according to the learned Senior Counsel, the action on the part of the landlord was not actuated by malice but to escape from any liability arising out of unfortunate death of general public.

(ii). The learned Senior Counsel relied upon a judgment of the Hon'ble Supreme Court dated 14.09.2021 in **Civil Appeal No.1833 of 2008 (Abdul Khuddus Vs. H.M.Chandiramani (dead), the Lrs. and others)** in Paragraph No. 38 to impress upon the Court that the Rent Control Legislations have got a limited application for determining the rights of the landlord owners and tenants but the Municipal enactments are wider and welfare oriented towards the residents of the area of the Corporation.

9. In view of the above said Hon'ble Supreme Court judgement, the learned Senior Counsel had contended that mere pendency of the rent control proceedings or dismissal of the rent control proceedings for demolition and reconstruction will not take away the statutory power of the Municipal Authorities from ordering demolition of a building which is likely to endanger the life and property of the inmates and the general public.

10.The learned Senior Counsel further contended that on 11.06.2021, this Court has passed an order directing the Municipal Corporation to conduct an inspection of the building on 16.06.2021 after issuing notice to all the parties concerned. This Court has also directed that the said inspection shall be fully videographed and copy of the report shall be furnished to the parties along with photographs. The tenants had given an undertaking that they would not carry on business activities in the premises. This Court has



further directed that the demolition of the building shall await the report of the inspection by the concerned authorities and consequential action should be taken to depend upon its outcome. The said order was passed with the consent of the parties appearing for the tenants also.

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11.The learned Senior Counsel had further contended that by an order dated 31.01.2021, the tenants were permitted to file their objection to the inspection report. However, till date, no objection has been filed to the inspection report. Again on 10.11.2021, this Court has passed an order granting time till 17.11.2021 to file an objection. Relying upon the said interim orders passed by this Court, the learned Senior Counsel contended that only with the consent of the parties, a direction was issued by the Court to the Assistant Executive Engineer of Madurai Corporation to inspect the premises and file a report. However, so far no objections have been filed to the said report.

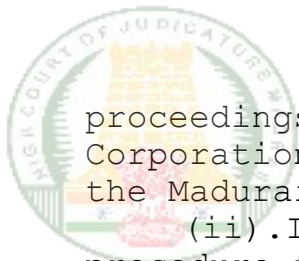
12.The learned Senior Counsel referred to the inspection report of the Engineer and contended that the entire building is 80 years old there is likely to arise an untoward incident because of the continues nature of the building. The learned Senior Counsel further contended that except the two petitioners, all other shop owners have already vacated. The learned Senior Counsel had further contended that after filing of the writ petitions, the petitioners have been heard at length and their objections have been considered before passing these interim orders by this Court. He had further contended that the inspection has been conducted by the Engineer of Madurai Corporation in the presence of the writ petitioners and the copy of the report has also been furnished to the writ petitioners in June 2021. Whatever lacuna that is being pointed out by the writ petitioners before passing of the impugned order, have been rectified by this Court by granting an opportunity to the writ petitioners and issuing a direction for inspection of the disputed premises. Hence, he contended that no useful purpose would be served in remitting the matter back to the Corporation Authorities. Hence, he prayed for sustaining the order passed by the Authorities in which the permission was granted to demolish the building.

13.I have given anxious consideration to the submissions made on either side.

14.There is no dispute with regard to the landlord and the tenant relationship between the writ petitioners and the third respondent/fifth respondent in the respective writ petitions. It is also an admitted fact that the application filed by the landlord before the rent control authorities as against both the tenants seeking eviction on the ground for demolition and reconstruction was rejected by the Rent Controller by an order in September-2019.

15.In view of the above said fact, the issue now that arises for consideration is;

<https://hcservices.ecourts.gov.in/hcservices/> the pendency /dismissal of the rent control



proceedings for demolition and reconstruction would be a bar for the Corporation Authorities to initiate proceedings under Section 327 of the Madurai Municipal Corporation Act?

(ii).If the authorities have got jurisdiction, what is the procedure to be followed by them before permitting the demolition?

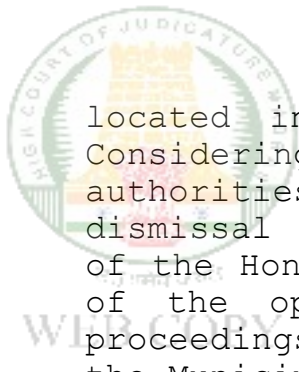
(iii).Whether not following the said procedure would vitiate the impugned order in the present case?

16.The learned Senior Counsel appearing for the respondent/landlord has brought to the notice of the Court a judgment of the Hon'ble Supreme Court dated 14.09.2021 made in **Civil Appeal No.1833 of 2008 (Abdul Khuddus Vs. H.M.Chandiramani (dead), the Lrs. and others)** in paragraph No.38 has held as follows:

"38.The High Court has returned a finding that the Rent Act will prevail over the Act. However, we are unable to agree with this observation. Both the statutes are enacted by the State of Karnataka. The Act deals with the Municipal functions which are wider and welfare -oriented towards the residents of the area of Corporation, whereas the Rent Act has a limited application for determining the rights of the land owner and tenant. Both operate in separate spheres as both have different objective to be achieved".

17.The Rent Control Legislation regulates the private rights of the landlord and tenant. On other hand, the Municipal Law regulates the relationship of the occupier of the property with that of the general public. When the building is in dilapidated condition and the same is likely to cause endanger only to the life and property of the occupants, the said issue could be very well be left to the domain of the rent control authorities. However, when the structural stability of a building is likely to cause endanger to the life or property of the neighbours or the general public, the Municipal Authorities cannot close their eyes and await for the verdict of the rent control authorities. Not only a public but a statutory duty is cast upon them to interfere and to see that the building is stabilised or demolished so that it does not affect the life or property of the general public. Both the Rent Control Legislations and the Municipal Laws relating to the demolition of the building operate on two different fields depending upon the class of persons likely to be affected by the dilapidated nature of the building. Hence, neither there is an overlapping between two enactments nor it is a case of one enactment prevailing over the other. Both operate in their respective fields depending upon the class of persons likely to be affected by the dilapidated condition of the building.

17A. In the present case, the shops in question are a restaurant and a sweet stall frequented by the general public. A perusal of the Engineer's report (appointed by this Court with the consent of the parties) discloses that the disputed building is



located in a busy bazaar area in the heart of Madurai City. Considering the safety of the general public, the Corporation authorities have rightly exercised the statutory power despite dismissal of the rent control proceedings. In view of the judgment of the Hon'ble Supreme Court and the reasons discussed above, I am of the opinion that the pendency/dismissal of a rent control proceedings for demolition and reconstruction would not be a bar for the Municipal Authorities to order demolition of a building.

18.A portion of the building had started to fall down on 04.05.2021 and immediately on the same day, the Corporation has issued series of notices to the landlord directing him to get permission for demolition of the building. This action has been initiated under Section 327 of Madurai Corporation Act. Two days thereafter, the landlord has chosen to make an application on 06.05.2021 to the Corporation Authorities seeking permission for demolition of the building. The impugned order has been passed after a period of 20 days on 26.05.2021 granting permission for demolition of the disputed building. Falling down of a portion of the building has already been reported in newspaper on 06.05.2021 itself. The sequence of the above said days would clearly indicate that it was not the landlord who approached the Corporation for demolition but it was otherwise. Hence, the contention of the writ petitioner that the entire exercise of the Corporation is actuated by malice in law is not legally sustainable.

19.The learned Senior Counsel appearing for the petitioner relied upon various judgments of our High Court which considered the parimateria provisions under Madras City Municipal Corporation Act. Our High Court has arrived at a finding that whenever a building is in occupation of a tenant, he should be put on notice and only after an inspection is conducted, the order of demolition should be decided. The Inspection report should be furnished to the landlord as well as the tenant and only thereafter, the Corporation should proceed with the demolition work. Admittedly, in the present case, the impugned order was not preceded with any notice to the occupier nor an inspection was conducted by the Corporation. The said fact has also been recorded in Paragraph No.10 of the interim order of this Court dated 31.01.2021.

20.Now let us consider whether the non-compliance of the procedure laid down by this Court would vitiate the impugned order of demolition by the respondent Corporation. The petitioners have mainly attacked the impugned order of demolition on the ground of jurisdiction citing the orders in Rent Control Proceedings, non issuance of show cause notice to the tenant and inspection to be conducted before passing the order of demolition. As far as the legal issue of jurisdiction of the Corporation authorities are concerned, the same has been answered as against the writ petitioners in the above said paragraphs.

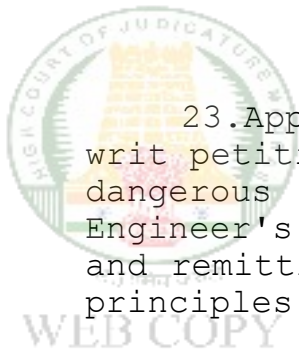


21.A Division Bench of our High Court in a judgment reported in **(2014) 8 MLJ 641 (Om Metal Infra Projects Ltd. Vs. Union of India)** in paragraph No.35 has held as follows:

"35.Question (vi):Whether the impugned actions have violated the principles of natural justice and whether following of such principle is warranted under the facts and circumstances of the present case?

It is well settled that application of the principles of natural justice is not a straight-jacket formula to be applied in each and every case. Certainly, facts and circumstances of each case should be gone into to decide as to whether such principle needs to be applied or not. The purpose of applying such principle is to put the affected person on notice and to get his views or explanation as to why such proposed action cannot be taken. If the person so affected, on receipt of notice gives explanation and satisfies the authority that the proposed action cannot be taken and/or it is not at all warranted, then the authority who is competent to take action, can take a view or decision based on such explanation. Therefore, it is crystal clear that such explanation or objection to be given by the affected person, much have a bearing on the decision to be taken by the authority concerned. In other words, such objection or explanation must be in a position to make the authority concerned to take a different view also, other than the one proposed already. To put in a nut-shell, there must be two views possible, one in favour and the other against the noticee. Only under such circumstances, the requirement of issuing notice and following the principles of natural justice arises. If no other view is possible or the explanation or objection to be made by such person cannot alter or have any bearing on the decision to be taken, there is no need to issue such notice. In those cases, issuance of notice would be only an empty formality".

22.After filing of the writ petitions, the writ petitioners have consented before this Court for appointment of an engineer of the Madurai Corporation to inspect the disputed property and file a report. Accordingly, the Engineer has inspected the property in the presence of the writ petitioners and has filed a report. The entire inspection has been videographed and photographed. A copy of the report has also been furnished to the writ petitioners. Though the inspection report was furnished to the writ petitioners in June 2021, the petitioners have not chosen to file any objection to the said report. The report of the Engineer also indicates that the building is in a dangerous condition warranting demolition. The above said facts would clearly indicate that even if the demolition order is quashed and remitted to the Corporation authorities, the writ petitioners would not have any further explanation to offer. Hence, the said exercise would only be an empty formality.



23.Applying the said judgment in the present case, when the writ petitioners have been heard at length before this Court and the dangerous condition of the building has been brought out by the Engineer's report, it will not be necessary to set aside the order and remitting back to the authorities on the ground of violation of principles of natural justice.

24.In view of the above said discussions, the writ petitions are dismissed as devoid of any merit. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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/06/2022

Sub Assistant Registrar(CS)

Msa

TO:

1.The Commissioner
Corporation of Madurai
Anna Malligai
Madurai

2.The Assistant Commissioner
Corporation of Madurai Zone -3
Anna Malligai
Madurai

3.The Executive Engineer
TANGEDO
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4.The Assistant Engineer
TANGEDO
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Madurai.

+1 CC to M/s.NIRANJAN S. KUMAR, Advocate (SR-25961[F] dated 15/06/2022)

+1 CC to M/s.J. ANANDKUMAR, Advocate (SR-26701[F] dated 20/06/2022)



+1 CC to M/s.R. MURALI, Advocate (SR-26688[F] dated 20/06/2022)

+1 CC to M/s.K. GUHAN, Advocate (SR-27039[F] dated 21/06/2022)

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