



W.P.No.25512 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Dated : 07.09.2023

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MRS. JUSTICE N.MALA**

**W.P.No.25512 of 2023
and WMP.Nos.24902, 24904 and 24905 of 2023**

B.Dinesh Kumar

... Petitioner

.Vs.

1.The District Collector
Chengalpattu

2.The Commissioner
Chengalpattu Municipality
Chengalpattu

3.The Tahsildar
Chengalpattu

4. The Executive Officer
Arulmighu Godhandaraman Swamy Thirukoil
Chengalpattu Town and Taluk

5.The Assistant Engineer
O&M Town, Chengalpattu
Chengalpet Town, Chengalpattu

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorari calling for the records of impugned notice of the 3rd respondent in Na.Ka.No.03/2023/A2 dated 18.08.2023 and the



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impugned notice of the 2nd respondent in Letter No.1/2023/F1 dated 23.08.2023 and quash the same.

For Petitioner : Mr.Godson Swaminathan
for Dhalapathy Vignesh Kumar

For respondents : Mr.P.Gurunathan, Addl Govt. Pleader
for R1 to R3
Mr.P.Srinivas Standing Counsel for R5
Mr.Yashvant, Addl.Govt.Pleader for R4.

ORDER

(Order of the Court was made by J.NISHA BANU, J.)

This writ petition is filed praying to quash the impugned notice of the 3rd respondent dated 18.08.2023 and the impugned notice of the 2nd respondent dated 23.08.2023.

2. It is averred in the writ petition that the petitioner is running a Hotel in the property of the 4th respondent temple. Since the said building was in dilapidated condition, the petitioner applied for building plan approval to the Commissioner, Chengalpattu Municipality on 18.03.2004. But the 2nd respondent rejected the building plan approval stating that the land belongs to the temple.



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3. According to the petitioner, the 4th respondent temple has given no objection to construct the building. From the year 2015, the petitioner is a tenant as per temple records. The petitioner put up construction and running a hotel as a tenant.

4. On 29.11.2019, the 4th respondent issued notice stating that the petitioner is the encroacher as per Section 78(1) of the Hindu Religious and Endowment Act and therefore, for taking necessary action, a case has been recommended to the Assistant Commissioner, HR & CE.

5. The petitioner's contention is that he challenged the fixation of rent before the Joint Commissioner and the said authority by an order dated 02.02.2022 fixed the fair rent of Rs.40,000/- for a period of 3 years. Thereafter, the 3rd respondent Tahsildar, Chengalpattu, has issued notice dated 18.08.2023 to the petitioner under the Tamil Nadu Public Buildings (Licensing) Act, calling for the petitioner to submit necessary documents to show that the petitioner is in possession of the said property. The 2nd respondent also issued a notice under Section 56 of the Tamil Nadu Town and Country Planning Act, 1971, asking the petitioner to call for Approval Plan vide notice dated 18.08.2023. In such circumstances, without even giving an



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opportunity, the 2nd respondent again issued notice dated 23.08.2023 directing to discontinue occupation of the premises, locking and sealing and demolition of the deviated unauthorised construction within 15 days of the said Letter. The learned counsel for the petitioner further contended that since the petitioner is paying the rent regularly to the 4th respondent without any default, the notices issued are liable to be set aside and therefore prayed this court to allow the writ petition.

6. Heard Mr.P.Gurunathan, learned Additional Government Pleader appearing for R1 to R3, Mr,Yashwant, learned AGP for 4th respondent and Mr.P.Srinivas learned Standing counsel for the 5th respondent on the above submissions. A counter affidavit has been filed by the 2nd respondent, stating that the petitioner obtained planning permission and the building permission and constructed the building for lodging and restaurant. But the petitioner has not obtained necessary licence for running a Lodge and trade licence. It is further submitted that the first notice calling for the plan was issued on 18.08.2023 giving 3 days time and since there was no reply, notice dated 23.08.2023 was issued for de-occupation. The petitioner has been granted the time of 15 days to de-occupy the building. But the petitioner has challenged the consequential action of the respondent.



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7. It is seen that the petitioner has already challenged the fixation of rent before the concerned authority. In such a situation the notices issued by the 3rd respondent dated 18.08.2023 and immediately thereafter, issuance of notice by the 2nd respondent dated 23.08.2023 asking to discontinue the occupation of the premises seem to be passed without giving sufficient opportunity to the petitioner to put forth his case before the concerned authority. Therefore, we deem it fit to quash the the impugned notice dated 23.08.2023 and the petitioner is to be given sufficient opportunity to put forth his case before the respondent authorities.

8. Accordingly, the notice dated 23.08.2023 is quashed. The petitioner is directed to give his explanation to the notice dated 18.08.2023 before the respondent authorities. The 2nd and 3rd respondent authorities on receipt of such explanation shall consider and pass necessary orders within a period of eight weeks from the date of receipt of such explanation. Thereafter, it is open to the respondent authorities to proceed with the matter in accordance with law. The Writ Petition is allowed on the above terms. No costs. Consequently, connected WMP is closed.

(J.N.B, J.) (N.M., J.)
07.09.2023

nvsri



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J. NISHA BANU, J.
and
N.MALA, J.

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To

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