



W.P. Nos. 32710 of 2023 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM

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

**W.P. Nos. 32710, 32714, 32715, 32979, 32980, 32981, 32984
and 32985 of 2023**

and

**W.M.P. Nos. 32316, 32318, 32321 to 32324, 32655, 32656
and 32658 to 32665 of 2023**

K.Salman	... Petitioner in W.P. No. 32710 of 2023
K.M.Kaleelur Rahman	... Petitioner in W.P. No. 32714 of 2023
K.Nazier	... Petitioner in W.P. No. 32715 of 2023
Ganesh Raja	... Petitioner in W.P. No. 32979 of 2023
M.Sheik Dawood	... Petitioner in W.P. No. 32980 of 2023
K.A.Mohammed Faizal	... Petitioner in W.P. No. 32981 of 2023
Stephen	... Petitioner in W.P. No. 32984 of 2023
K.S.Abdul Razack	... Petitioner in W.P. No. 32985 of 2023

-VS-

1. The Commissioner,
Coimbatore Municipal Corporation,
Coimbatore, Coimbatore District.
2. The Assistant Commissioner,
Central Zone, Coimbatore Municipal Corporation,
Coimbatore, Coimbatore District.



W.P. Nos. 32710 of 2023 etc., batch

3. The Procurator,
The Coimbatore Diocese Society,
(The Roman Catholic Mission),
Bishop's House, P.B. No.6,
Door No.1276, Big Bazaar Street,
Coimbatore – 641001.

... Respondents in all W.P.s.

Common Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the entire records relating to the impugned notice dated 14.11.2023 issued by the First Respondent and quash the same.

For Petitioners : Mr. C.Prakasam
(in all W.P.s.)

For Respondents : Mr. D.R.Arun Kumar (for R1 & R2)
(in all W.P.s.)

Dr. Father Xavier Arul Raj, Senior Counsel
for M/s. Fr. Xavier Associates (for R3)

COMMON ORDER

Heard Mr. C.Prakasam, Learned Counsel for the Petitioners,
Mr. D.R.Arun Kumar, Learned Counsel appearing for the First and Second Respondents and Dr. Father Xavier Arul Raj, Learned Senior Counsel appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.



W.P. Nos. 32710 of 2023 etc., batch

2. The Petitioners in these Writ Petitions are occupants of the building said to be owned by the Third Respondent, viz., Coimbatore Diocese Society, situated at Door Nos. 1266 to 1286, Big Bazaar Street, Ward No. 81, Central Division, Coimbatore Corporation. After arriving at the conclusion that the building occupied by the Petitioners was found to be in a dilapidated condition endangering public safety in the inspection conducted on 28.10.2020, the First Respondent had required each of the Petitioners by separate notices in Proceedings Na. Ka. No. 7687/2018/MH5 dated 05.11.2020 and 21.11.2020 under Section 327 of the Coimbatore Municipal Corporation Act, 1981, to evacuate from the respective portions occupied by them, which was challenged in W.P. Nos. 16858, 19246, 17298 and 20471 of 2020 before this Court in which a common order dated 31.03.2022 was passed disposing those cases holding as follows:-

“3. The petitioners are all tenants of the Diocese Society and are carrying on business in various portions in the shopping complex. According to them, there were measures to evict them from occupation and as the Diocese Society has been unable to succeed therein, they have prevailed upon the Corporation to issue the impugned notices on the misconceived and erroneous ground that the building is itself unstable, dilapidated and structurally unfit.



4. It is hence that the impugned notices dated 05.11.2020 and 21.11.2020 have come to be issued by R1 to the effect that the building in question is proposed to be demolished on 28.10.2020 for the reason that it is unfit for occupation. The notices are addressed to nine of the occupants calling upon them to vacate the premises immediately.

5. Learned Senior Counsel for learned counsel for the Diocese Society would submit that out of a total of 40 shops, 23 portions have been vacated and only 17 remain occupied as on date. The impugned notices have been issued only to 10 noticees including one as against which an endorsement has been made stating 'closed'. Thus, it is unclear as to whether only the 9 noticees continue in occupation of the premises or whether there are other occupants as well to whom such notices have not been issued. No clarity is forthcoming on this point.

6. When the matter had come up for admission, the petitioners were granted interim protection by staying the impugned notices. Today, after 1 ½ years from the issuance of impugned notices, this Court has to take note of the balance of convenience in the matter. If the notices issued by the Corporation are genuine and well-founded and after a proper inspection and assessment of the building, then it is certainly not in public interest to allow the building to stand.



W.P. Nos. 32710 of 2023 etc., batch

7. Then again, the same cause of action as pursued in these writ petitions has been raised before the Civil Courts as well in Suits filed by the Diocese seeking eviction of the tenants. These Civil Suits are pending before various Courts as follows:-

S. No.	Suit No.	Name of the Defendants	Court
1.	406 of 2018	Sheik Dawood	V ADM
2.	407 of 2018	Stephen	PDM
3.	699 of 2019	Muralidharan Babu	V ADM
4.	412 of 2018	Ramasamy	V ADM
5.	406 of 2018	Mohammed Ismail	V ADM
6.	902 of 2018	P.Hariharan	III ADM
7.	913 of 2018	P.P.Rajendran	II ADM
8.	915 of 2018	Ganesh Raj	IV ADM
9.	1063 of 2020	Jayanthi and 11 others	II ASJ

8. The third petitioner in W.P.No.17298 of 2020 has, in fact, obtained a judgment in his favour in O.S.No.910 of 2018 on 02.03.2020, as against which the Diocese is in appeal in A.S.No.51 of 2021, pending before 4th Additional Sessions Judge, Coimbatore. The petitioners have also made a representation before the Principal Sessions Judge on 10.03.2020 seeking consolidation of all the Civil Suits pending before various Courts and expeditious hearing and disposal of the matters, seeing as one of the buildings abutting the shopping complex is a school and thus the interests of children are also involved apart from the visitors to the complex.



9. Thus, and in my anxiety to achieve a balance between the interests of the parties, a direction is issued to the Principal Sessions Judge, Coimbatore, that shall be communicated by the office of R1 through Mr.S.Saravanan, learned counsel for the Corporation of Coimbatore, to consolidate all the matters detailed above, assign the matters for hearing before a Judge for disposal together, such that they are heard and disposed within a period of three (3) months from today.

10. The interim protection already granted will continue for a period of 90 days from today or till the disposal of the Suits, whichever is earlier.

11. Learned counsel for the Diocese Society also makes reference to a Commissioner's report which is detailed in regard to his assessment of the shops. His concluding opinion is to the effect that the structure in question is unfit. While deciding the case, the report of the Commissioner shall be taken into account by the learned Judge and appropriate orders passed."

It is brought to notice that the aforesaid suits relating to eviction of the Petitioners from the property have now been transferred to the file of the IV Additional District Munsif Court, Coimbatore, where separate trial is taking place in respect of each of those cases. However, in the meanwhile, the First



W.P. Nos. 32710 of 2023 etc., batch

Respondent has issued fresh notices dated 14.11.2023 invoking Section 136(1) of the Tamil Nadu Urban Local Bodies Act, 1998, (hereinafter referred to as 'the Act' for short), which has come into force with effect from 13.04.2023, calling upon each of the Petitioners to evacuate from the respective portions occupied by them in the dilapidated building endangering public safety, which is impeached in these Writ Petitions.

3. At this juncture, reference must be made to Section 136 of the Act, which is extracted below:-

136. Power to order removal of dangerous buildings, trees, etc.—(1) Where it appears to the Commissioner at any time that any building is in a ruinous condition or is in any way dangerous or unfit for human habitation or over crowding in a building, the Commissioner may, by an order in writing, require the owner or the occupier of such building to vacate, demolish, remove such building within the time limit specified in the said order.

(2) Where it appears to the Commissioner at any time that any tree is in a ruinous condition or is in any way dangerous condition in any area of a municipality, he may by order in writing remove the tree forthwith.

(3) Where the owner or occupier of the building does not comply with the order issued under this section, the



Commissioner shall take such step in relation to the building or tree as may be necessary to prevent any occurrence of danger therefrom.

(4) All expenses incurred by the Commissioner, in relation to any building or tree under this section shall be recoverable from the owner or the occupier thereof, as the case may be, as arrears of land revenue.

4. In response to a query raised by this Court as to whether any prior inspection had been conducted after notice to the Petitioners, it has been informed that the earlier inspection conducted on 28.10.2020 is relied in that regard and the following order was passed on 20.11.2023 by this Court:-

“ The Petitioners in these Writ Petitions and the authorized representative of the Third Respondent shall be present at 10.00 am on 21.11.2023 at the site for spot inspection to ascertain the condition of the entire building generally and with specific reference to the portions occupied by each of the Petitioners, which shall be fully video-graphed as the cost borne by them.

2. The presence of the parties shall be informed before the court at 10.30 am on 21.11.2023.”

When the matter came up for hearing on 21.11.2023, the following order was passed:-



W.P. Nos. 32710 of 2023 etc., batch

“ It is informed by Learned Counsel for the First and Second Respondents that Mr. K.Sathiya, Assistant City Planner, Coimbatore Corporation, the Petitioner and the representative of the Third Respondent are present today at the site and inspection of the building is now carried out.

2. Learned Senior counsel appearing for the Third Respondent states that the entire expenses of videographing of the inspection would be borne by the Third Respondent.

3. The Assistant City Planner, Coimbatore Corporation shall file report based on the inspection conducted regarding the structural stability of the entire building with specific reference to each shop also, before the next hearing.”

In furtherance of the said order, the City Planner, Coimbatore Municipal Corporation has submitted his report dated 23.11.2023 along with photographs and video recordings taken during inspection conducted in the presence of the Petitioners and the Respondents and other officials highlighting that it has been found that the building occupied by the Petitioners is in a dilapidated condition endangering public safety warranting action under Section 136 of the Act and its copy has been placed on record.



W.P. Nos. 32710 of 2023 etc., batch

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5. In the aforesaid circumstances, this Court does not find any justification to interfere with the impugned orders passed by the First Respondent. At the same time, it must be pointed out that Section 136 of the Act intends only to ensure the safety of the public on account of the ruinous condition of a dilapidated building and that the same cannot be adopted as a camouflage for the owner of a building to evict his tenants from there, except on their individual voluntary surrender, failing which the prescribed procedure has to be resorted for the same. This would obviously mean that inasmuch as the Third Respondent has already filed suits against the Petitioners for their eviction from the building, their outcome would have to be awaited. However, it would not preclude the First and Second Respondents from taking imminent measures to ensure public safety by preventing any person from entering into the building or taking any other required action in the manner provided by law. In other words, such action taken by the First and Second Respondents cannot be meant to enable the Third Respondent to indirectly resume possession of the property from the Petitioners without recourse to law.

6. In continuation of the order passed dated 31.03.2022 in W.P. No. 19246 of 2020 etc., batch passed by this Court, the IV Additional District Munsif



W.P. Nos. 32710 of 2023 etc., batch

before whom the suits for eviction filed by the Third Respondent against the Petitioners are pending, shall ensure that there is atleast one effective hearing every week showing progress of all those cases and monthly reports are sent to the Registrar (Judicial) of this Court till those matters are finally disposed.

In the result, the Writ Petitions are disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

29.11.2023

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 27.02.2024.

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To

1. The Commissioner,
Coimbatore Municipal Corporation,
Coimbatore, Coimbatore District.
2. The Assistant Commissioner,
Central Zone, Coimbatore Municipal Corporation,
Coimbatore, Coimbatore District.
3. The Procurator,
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W.P. Nos. 32710 of 2023 etc., batch

Copy to

1. The Registrar (Judicial),
Madras High Court,
Chennai – 600 104.
2. The IV Additional District Munsif,
Coimbatore.



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W.P. Nos. 32710 of 2023 etc., batch

P.D. AUDIKESAVALU, J.

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W.P. Nos. 32710 of 2023 etc., batch

29.11.2023