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W.P. No. 33653 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM

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

W.P. No. 33653 of 2023

1. M.Aruna Kamatchi

2. A.P.Govindasamynathan

3. A.P.Arunkumar

... Petitioners

-VS-

1. The Commissioner,
Greater Chennai Corporation,
Chennai – 600 003.

2. M/s. S.R.K.T. Company,
Represented by Mr. Mallikarjun,
Old No. 13, New No. 24,
Mooker Nallamuthu Street,
Chennai – 600 001.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the First Respondent to take legal action to as per the representation dated 06.11.2023 made by the Petitioners for demolishing the building bearing Old No. 18, New No. 24, Mooker Nallamuthu Street, Chennai – 600 001 under Section 258 of the Chennai City Municipal Corporation Act, 1919.



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For Petitioners : Mr. S.William
For Respondents : Mrs. K.Ashwini Devi,
Standing Counsel (for R1)
Mr. N.Sivaprakash (for R2)

ORDER

Heard Mr. S.William, Learned Counsel for the Petitioners, Mrs. K.Ashwini Devi, Learned Standing Counsel appearing for the First Respondent and Mr. N.Sivaprakash, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioners who claim to be the owners of the property situated at Old No. 18, New No. 24, Mooker Nallamuthu Street, Chennai, had made a representation dated 06.11.2023 to the First Respondent to take legal action to demolish the building in that property in the exercise of powers under Section 258 of the Chennai City Municipal Corporation Act, 1919, but as it did not evoke any response, it is insisted to filing of this Writ Petition.

3. As rightly pointed out by the Learned Counsel appearing for the First Respondent from the materials borne out of the record that as the Second



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Respondent is now in occupation as tenant of the said property belonging to the Petitioners, it is incumbent upon them to follow the prescribed procedure under the relevant statutory provisions for terminating the lease and evict the Second Respondent from that property and thereafter make an application in terms of Section 133 of the Tamil Nadu Urban Local Bodies Act, 1998, which has come into force with effect from 13.04.2023, for demolition of the building in the property. In the absence of the Petitioners complying with those mandatory requirements, the First Respondent cannot be faulted for not taking action on the representation dated 06.11.2023 made by the Petitioner for demolition of the building in that property.

4. In this context, reference must be made to the dictum laid down by the Hon'ble Supreme Court of India in the decision in ***Director of Settlements, A.P. -vs- M.R. Apparao*** [(2002) 4 SCC 638], which reads as follows:-

"17. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or



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*any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (**Kalyan Singh -vs- State of U.P.** (AIR 1962 SC 1183). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law...."*



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Applying the aforesaid principles to the facts of this case *viz-a-viz* the cogent reasons assigned for refusing to accede to the claim made by the Petitioners, there does not appear to be any justification to direct the First Respondent to dispose the representation dated 06.11.2023 made by the Petitioners as sought in the Writ Petition.

In the result, the Writ Petition is dismissed with the aforesaid clarifications. No costs.

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Index: Yes/No
NCC: Yes/No

Note: Issue order copy by 13.02.2024.

vjt

To

The Commissioner,
Greater Chennai Corporation,
Chennai – 600 003.



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P.D. AUDIKESAVALU, J.

vjt

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