



W.P(MD)No.3023 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3023 of 2023

and

W.M.P(MD)No.2843 of 2023

P.Basheer Ahmed

... Petitioner

Vs

1.The Commissioner,
Tiruchirapalli Municipality,
Tiruchirapalli.

2.The Assistant Commissioner,
Abishekapuram Zone, Tiruchirapalli Corporation,
Tiruchirapalli.

3.A.Rafiq

4.S.Nallaiya

5.P.Chandra

6.L.Natarajan

7.K.Kajamoideen

8.M.Pushparaj

9.S.Ramesh Kumar

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to implement the order passed by the second respondent in his proceedings in Na.Ka.No.f dated 21.11.2022 by demolishing the building situate at T.S.No. 48/2, 7th Cross Street, Thillai Nagar, Tiruchirappalli with necessary protection forthwith within the period that may be stipulated by this Court.

For Petitioner : Mr.Ajmal Khan, Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.Kishore Ram
for M/s.R.B.Associates for R.1 & R.2

Notice Dispensed With for R.3 to R.9

ORDER

Heard the learned Senior Counsel appearing for the writ petitioner and the learned counsel appearing for the Trichy City Municipal Corporation. Considering the nature of relief to be granted, issuance of notice to the private respondents is dispensed with.

2.The writ petitioner is the owner of the petition mentioned premises. The private respondents are tenants. Eviction order has been obtained against some of the tenants. It is stated that the petition mentioned building has become old and dilapidated and not fit for human habitation. Under the



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relevant provisions of Coimbatore City Municipal Corporation Act which is applicable to Trichirappalli City Municipal Corporation, the local body is under obligation to demolish old and dilapidated buildings which have become unsafe. The case of the petitioner is that the petition mentioned building is one such. However, this Court will not be justified in straightaway issuing mandamus for demolition.

3.The learned Senior Counsel drew my attention to the notice already issued by the Assistant Commissioner Zone -5 Trichy Corporation on 21.11.2022 under Section 327(1) of the Act. It is not clear from the said notice if it was issued after issuing prior notice to the persons occupying the building. I therefore direct the first respondent to re-do the exercise. The first respondent will cause inspection of the petition mentioned premises. Before conducting inspection, the private respondents herein shall be put on notice. The structural stability of the building will be examined. After getting inputs from the Civil Engineer regarding the structural stability and after associating the tenants of the premises, the first respondent will pass final order in this regard. If the first respondent comes to the conclusion that the building is old, dilapidated and unfit for human habitation, he shall demolish the same. It is open to the first respondent to pass order one way or the other. In any event, the entire



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exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. The first respondent need not feel distracted by the pendency of the rent control proceedings. A learned Judge of this Court vide order dated 20.06.2022 made in W.P(MD)No.9745 of 2021 had held as follows:

“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



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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.”



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If the first respondent comes to the conclusion that the building has to be demolished then the Corporation authorities shall implement the same after giving breathing time to the tenants concerned. If necessary, police aid can also be taken. This writ petition is disposed of on these terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

15.02.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

Note: Issue Order Copy on 20.02.2023.

To

- 1.The Commissioner,
Tiruchirapalli Municipality,
Tiruchirapalli.
- 2.The Assistant Commissioner,
Abishekapuram Zone, Tiruchirapalli Corporation,
Tiruchirapalli.



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G.R.SWAMINATHAN, J.

MGA

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