



W.P.(MD)No.13299 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 06.11.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.13299 of 2021

Mohammed Riaz

... Petitioner

vs.

1.The Assistant Commissioner,
Trichy Corporation, Trichy.

2.Abdul Salam

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the 1st Respondent herein to consider petitioner representation dated 23.06.2021 and consequently direct the Respondent to pass necessary orders for demolition of land and building situated at the property measuring to an extent of 934.1/4 Sq. Ft., comprised in T.S.No.2114 and New T.S.No.102 situated at No.98, N.M.Stores, Palakkarai, Trichy – 08.

For Petitioner	:Mr.P.R.Dhilip Kumar
For R1	:Mr.R.Baskaran
	Additional Advocate General
For R2	:Mr.K.Vadivel



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ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Mandamus directing the first respondent to consider the representation made by the petitioner on 23.06.2021, wherein, the petitioner has sought for the demolition of the subject property on the ground that the same is in a dilapidation condition.

2.Heard Mr.P.R.Dhilip Kumar, learned Counsel appearing on behalf of the petitioner, Ms.R.Baskaran, learned Additional Advocate General appearing on behalf of the first respondent and Mr.K.Vadivel, learned Counsel appearing on behalf of the second respondent.

3.When the matter was taken up for hearing, the learned Additional Advocate General appearing on behalf of the first respondent submitted that earlier, a notice was issued on 27.08.2018 by the first respondent granting permission to demolish the subject property. The learned Additional Advocate General fairly submitted that under Section 344 of the Salem City Corporation Act, such an order can be passed only after



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issuing notice to all the parties concerned including the party, who is possession of the property. However, the property was in possession of a tenant and such a notice was not issued to the tenant and hence, the petitioner cannot take advantage of the notice dated 27.08.2018.

4.The learned Counsel appearing on behalf of the second respondent submitted that the petitioner has filed this Writ Petition by concealing a material fact. The learned Counsel brought to the notice of this Court the judgment and decree passed in O.S.No.494 of 2012 by the I Additional District Munsif Court, Trichy, dated 13.06.2019. On going through the judgment, it is seen that the second respondent along with others had filed a suit for permanent injunction against the petitioner and another to injunct them from evicting the second respondent and others without following the due process of law. The suit was also decreed and the petitioner was injuncted from evicting the tenant unless and otherwise by following the due process of law. This judgment has also become final. The learned Counsel submitted that without revealing this fact, the petitioner has filed the present Writ Petition and had attempted to get an order behind the back of the second respondent and therefore, it



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was contended that the petitioner has approached this Court with unclean hands.

5.This Court has carefully considered the submissions made on either side and the materials available on record.

6.The petitioner has filed the present Writ Petition for an innocuous prayer for a direction to the first respondent to consider the representation dated 23.06.2021, wherein, the petitioner is seeking for the demolition of the subject property on the ground that it is in a dilapidation condition. The petitioner has conveniently concealed the judgment and decree passed in O.S.No.494 of 2012 dated 13.06.2019. By virtue of this decree, the petitioner was enjoined from evicting the second respondent and others without following the due process of law. The petitioner instead of filing an appropriate petition for eviction against the tenants before the concerned Court, has chosen to adopt an indirect method to evict the tenant by making a representation to the first respondent to grant permission to demolish the superstructure. The petitioner seems to be taking advantage of the earlier order passed on



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27.08.2018 by the first respondent granting permission for demolition.

As rightly contended by the learned Additional Advocate General, such an order could not have been passed without issuing notice to all concerned including the tenants, who are in possession of the property.

7.In the considered view of this Court, the petitioner has approached this Court with unclean hands and that by itself disentitles the petitioner from getting any remedy from this Court. The petitioner ought to have pleaded in the affidavit regarding the earlier suit that was filed by the second respondent and others in O.S.No.494 of 2012 and the judgment and decree passed therein. Since the petitioner had chosen to conceal this fact, the Writ Petition filed by the petitioner has to be thrown out by this Court. This Court finds that the petitioner has approached this Court with unclean hands and therefore, he is not entitled for the relief sought for in this Writ Petition.



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WEB COPY 8. In the light of the above, this Writ Petition is dismissed. No costs.

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

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N.ANAND VENKATESH, J.

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