



1

W.P.(MD)NO.7459 OF 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.7459 & 9291 of 2015 AND
M.P.(MD)Nos.1 & 2 of 2015

W.P.(MD)No.7459 of 2015

U.Dhanasamy

... Petitioner

Vs.

1. The District Collector,
Pudukkottai.
2. The Executive Engineer,
Public Works Department,
Pudukkottai.
3. The Commissioner,
Pudukkottai Municipality,
Pudukkottai.
4. Khasim,
Proprietor,
M/s.Golden Chappals,
Keezha Raja Veedhi,
Pudukkottai.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing respondents 1 to 3 from demolishing the petitioner's shop at T.S.No.3092 to 3095 Nelmandi Street, Pudukkottai.

For Petitioner : Ms.Porkodi Karnan,
for M/s.Polax Legal Solutions.



WEB COPY



For R-1 & R-2 : Mrs.K.Christy Theboral,
Additional Government Pleader.

For R-3 : Mr.P.Mohamed Suhail

For R-4 : No appearance.

* * *

W.P.(MD)No.9291 of 2015

U.Dhanasamy

... Petitioner

Vs.

1. The District Collector,
Pudukkottai.
2. The Revenue Divisional Officer,
Pudukkottai Sub Division,
Pudukkottai District.
3. The Executive Engineer,
Public Works Department,
Pudukkottai.
4. The Commissioner,
Pudukkottai Municipality,
Pudukkottai.

5. Jaffer Sheik

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the second respondent in his proceedings bearing Na.Ka.A5/5803/2014 dated 22.05.2015 and quash the same.



For Petitioner : Ms.Porkodi Karnan,
for M/s.Polax Legal Solutions.
For R-1 to R-4 : Mrs.K.Christy Theboral,
Additional Government Pleader.
For R-5 : Mr.P.Mohamed Suhail
* * *

COMMON ORDER

Heard the learned counsel on either side.

2. The writ petitioner is a tenant occupying a shop in the petition-mentioned building. Dispute is pending between the petitioner and the landlord. Litigations are going on. The petitioner apprehended that the local body may demolish the building itself on the ground that it has become old and dilapidated. For forbearing the authorities from demolishing the building, W.P.No.7759 of 2015 was filed. During its pendency, the impugned order dated 22.05.2015 came to be issued for demolishing the building. Challenging the same, W.P.(MD)No.9291 of 2015 came to be filed.

3. The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court



to set aside the order dated 22.05.2015 and grant relief as prayed for.

4. Per contra, the learned counsel appearing for the contesting respondent submitted that since the building had become old and dilapidated and is posing hazard to the general public and children, the impugned order came to be passed. He drew my attention to the order passed by this Court vide order dated 15.02.2023 made in W.P.(MD)No.3023 of 2023. He called upon this Court to sustain the impugned order and dismiss the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. I endorse the stand of the learned counsel appearing for the contesting respondents that the pendency of the dispute between the landlord and the tenant before the jurisdictional Court / forum need not come in the way of the landlord from invoking the relevant provisions of the municipal law relating to local bodies. With regard to



demolishing the old and dilapidated building, the Hon'ble Supreme Court vide Order dated **14.09.2021** in **Civil Appeal No.1833 of 2008 (Abdul Khuddus V. H.M.Chandiramani (dead), the Lrs. and others)** had 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



WEB COPY



dilapidated condition and the same is likely to cause endanger only to the life and property of the occupants, the said 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



WEB COPY



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."



7. But in the present case, the landlord had not approached the Commissioner, Pudukkottai Municipality. He had only invoked Section 133 of Cr.P.C. The learned counsel for the landlord submitted that while he can very well approach the local body for pulling down the dilapidated building, he cannot be prevented from invoking the power under Section 133(1)(d) Cr.P.C. The said provision reads as such:-

**“133. Conditional order for removal
of nuisance.—(1)**

a) ...

b) ...

c) ...

d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; ”



WEB COPY

8. The provision contemplates issuance of notice to the person who is in possession. In this case, admittedly though the petitioner is in possession of the building, he has not been put on notice. Section 133(1) r/w. Section 138 Cr.P.C. contemplates that if the person against whom an order under section 133 is made appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case. In this case, the second respondent has not at all followed the procedure set out in Cr.P.C. Therefore, the order impugned in this writ petition is illegal and the same is set aside. W.P.(MD)No.9291 of 2015 is allowed. The right of the landlord to avail appropriate remedies under law is left open.

9. In view of the order passed in W.P.(MD)No.9291 of 2015, W.P.(MD)No.7459 of 2015 is closed. No costs. Consequently, connected miscellaneous petition is closed.

03.08.2023

NCC : Yes / No
Index : Yes / No



10

W.P.(MD)NO.7459 OF 2015

Internet : Yes/ No
PMU

WEB COPY

G.R.SWAMINATHAN,J.

PMU

To:

1. The District Collector,
Pudukkottai.
2. The Revenue Divisional Officer,
Pudukkottai Sub Division,
Pudukkottai District.
3. The Executive Engineer,
Public Works Department,
Pudukkottai.
4. The Commissioner,
Pudukkottai Municipality,
Pudukkottai.

W.P.(MD)Nos.7459 & 9291 of 2015

03.08.2023



WEB COPY



11

W.P.(MD)NO.7459 OF 2015