



W.A.(MD).No.145 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.12.2023

CORAM

**THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD).No.145 of 2023
and
C.M.P.(MD).No.1968 of 2023

P.Mala .. Appellant/4th Respondent

Vs.

1.G.Rajkumar .. 1st Respondent/Writ Petitioner

2.The Commissioner,
Corporation of Madurai,
Madurai – 625 002.

3.The Commissioner of Police,
Madurai City.

4.The Inspector of Police,
Karimedu Police Station,
Madurai City.

.. Respondents 2 to 4/
Respondents 1 to 3

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 01.09.2022 in W.P.(MD).No.14544 of 2022 on the file of this Court and thereby allow this appeal.



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For Appellant : Mr.V.Balaji
For R-1 : Mr.G.Kannan
For R-2 : Mrs.S.Devasena
Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by S.M.SUBRAMANIAM,J.)

The Writ Appeal has been instituted challenging the order dated 01.09.2022 passed in W.P.(MD).No.14544 of 2022.

2. The fourth respondent in the Writ proceedings is the appellant before us. The first respondent herein preferred a Writ proceedings seeking a direction to the first respondent to demolish the dilapidated building of the writ petitioner situated in T.S.No.1133/4, New T.S.No.126 and 295 at Door No.12/21 admeasuring 760 ½ square feet at Azhakaradi 3rd Street, Madurai – 625 016.

3. The learned counsel for the appellant, Smt.P.Mala, mainly contended that the demolition cannot be done in respect of the subject



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property, since in the event of demolition, the property belonging to the appellant will also be damaged. More so, the appellant secured a decree from the Civil Court in O.S.No.181 of 2011 on the file of Principal District Munsif Court, Madurai and EP.No.12 of 2022 was also filed before the Additional District Munsif Court, Madurai Town, for executing the decree. Therefore, demolition cannot be carried out.

4. The learned Standing Counsel appearing on behalf of the Madurai Corporation made a submission that the Corporation has no objection for demolition. However, the first respondent has to demolish the dilapidated building without causing any damage to the neighbouring buildings.

5. A Civil Court decree cannot take away the right of the first respondent in the present Writ Appeal. Right to property is a constitutional right under Article 300-A of the Constitution of India and such right can be taken away only by the authority of law. For demolition of a building, due approval is to be obtained from the local body. In the present case, the Madurai Corporation has no objection for demolition of the building and the learned Standing Counsel for the Corporation made a submission that



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permission was also granted. Therefore, the Civil Court decree will not have the effect of infringing the right of a person, which is a constitutional right.

6. Admittedly, the first respondent is going to demolish his own property, which is not in dispute by the appellant. Her only apprehension is that her building should not be damaged on account of such demolition.

7. Considering the dispute between the writ appellant and the first respondent, we direct the first respondent to engage a qualified Civil Engineer for the purpose of carrying out demolition without causing any damage to the building belonging to the writ appellant or violating the mandatory injunction granted by the Civil Court. In the event of any damage accidentally or otherwise, the first respondent has to rectify the same at his cost. The writ appellant shall co-operate for the demolition and adequate safety measures are to be taken by the first respondent while demolishing the old building.



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8. With the above direction, this Writ Appeal stands disposed of.

There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

(S.M.S.,J.) (V.L.N.,J.)
14.12.2023

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

To

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