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W.P.No.1900 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2024

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.1900 of 2024
and
W.M.P.Nos.1998, 2000 and 2001 of 2024

Mrs.Philomina

... Petitioner

Vs.

1.The Commissioner,
Chengalput Municipality,
Chengalput Town,
Chengalput Taluk & District.

2.The Collector,
Chengalput District,
Chengalput Taluk & District.

3.Mr.John Kribakaran

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records connected with the impugned order in proceeding Na.Ka.No.1891/2023/F1, dated 27.10.2023, issued by the 1st respondent and quash the same.

For Petitioner : Mr.T.R.Shanmugam

For Respondents :

For R1 : Mr.P.Srinivas



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For R2 : Mr.A.M.Ayyadurai
Government Advocate

For R3 : Mrs.A.Sumathy

ORDER

This Writ Petition has been filed by the petitioner seeking for issuance of a Writ of Certiorari, to call for the records connected with the impugned order in proceeding Na.Ka.No.1891/2023/F1, dated 27.10.2023, issued by the 1st respondent and quash the same.

2. According to the petitioner, her father Kesavalu during his lifetime, had entered into Oral Lease Agreement with one lady namely M/s.Scilia, D/o Nathan. The father of the petitioner had expired on 08.10.2011 and the petitioner along with her family members have been residing in the tenanted property.

3. The case of the petitioner is that she along with her family members have been residing in the said property by paying property tax and electricity consumption charges etc for three decades by which they got adverse possession also. While so, all of a sudden, the third respondent herein who is claiming as Power of Attorney of the owner of the property lodged a complaint before the



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Police where, he was advised to approach the Civil Court and the police closed the complaint. Thereafter, the third respondent again lodged a complaint before the District Crime Branch-II (DCB-II), Chengalput. However, the petitioner lodged a complaint before the D1 Town Police Station, Chengalput, but they have not considered the complaint since the dispute is in civil nature.

4. According to the petitioner, on 30.12.2023 about 8.30 a.m., the third respondent along with some rowdy elements, had trespassed into the house of the petitioner and demolished the latrine room, well with motor etc. While so, the first respondent passed the demolition order dated 27.10.2023.

5. The grievance of the petitioner is that the first respondent before passing the demolition order, has not issued any notice to the petitioner, who is in actual possession and enjoyment of the property and the first respondent has not followed the due procedure before passing the demolition order.

6. Therefore, apprehending that at that time the building where the petitioner has been residing will be demolished by the first respondent, the petitioner has come forward with the present writ petition challenging the



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demolition order dated 27.10.2023.

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7. A counter affidavit has been filed on behalf of the first respondent wherein, while denying the averments made by the petitioner, it has been stated that the petitioner seems to be claiming that she is the lessor or under the owner of the property M/s.Nathan, but later, the petitioner claims ownership over the property by adverse possession.

8. The first respondent had received application on 21.08.2023 from one Rose Mary Rani, W/o.Anthony Nathan, seeking permission to demolish the building in Ward No.6, Block No.5, T.S.No.11, Door No.16, 4th Cross Street, TELC Compound, Anna Nagar, Chengalput.

9. The said Rose Mary Rani, who claims to be the owner of the subject property had produced all the relevant documents before the first respondent and sought for demolition of the building since, it is in dilapidated condition endangering life of the inmates and neighbors of the building. On verification of the documents, the permission for demolition of the building was issued by the first respondent on 27.10.2023. Thereafter on 30.12.2023, the petitioner had submitted a letter stated that the third respondent and some other persons had



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trespassed into her house and had demolished certain portion of the building, trees and plants and therefore, she sought to cancel the demolition order dated 27.10.2023. On receipt of the said letter dated 30.12.2023, a notice was issued on the same day i.e., on 30.12.2023, to the petitioner calling upon her to furnish the documents in order to substantiate her claims over the property. Though the petitioner received the said notice, however, she has not submitted any document or proof towards her claim over the subject property.

10. According to the first respondent, he is not the authority to decide the title or possession of the property and the impugned demolition order dated 27.10.2023 has been passed only based upon the documents that have been produced by Rose Mary Rani through her Power of Attorney the third respondent herein. There is no undue exercise or abuse of power by the first respondent. With these averments, the first respondent sought for dismissal of the writ petition.

11. The third respondent herein also filed a counter affidavit wherein, while denying the averments made by the petitioner in the writ petition, it has been stated that the property originally belongs to M/s.Nathan and thereafter, his son Mr.Anthony Nathan inherited the same and was enjoying the property till his lifetime and he died intestate on 12.07.1995 leaving behind his Legal Heirs



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viz., Rose Mary Rani (wife) and two children.

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12. The petitioner originally came as tenant and paid rent till April 2020 and thereafter, due to Covid-19 Pandemic, she avoided to pay rent to the owners with an ill motive to grab the property.

13. The building is in dilapidated condition and due to heavy rain, the backside portion of the building fell down and seven dogs also died and in that area children were playing very often and hence the neighbors of the adjacent building questioned the third respondent since he was maintaining the property being Power of Attorney of the original owner.

14. Subsequently, the third respondent had applied for demolition of the building on behalf of the original owner. The third respondent has orally informed the petitioner's family to vacate the property by showing demolition order. However, the petitioner with ill motive in order to grab the property sent complaint to Municipality Office and Superintendent of Police.

15. According to the third respondent, the petitioner cannot claim title by adverse possession since she admitted that she is the tenant in the property and



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if she is claiming the property as adverse possession, she has to approach the competent Civil Court and the writ petition is not maintainable. The first respondent after thorough verification of the title over the property, on condition of the building, has passed the demolition order.

16. The petitioner has no right to challenge the demolition order which was obtained by the owner of the property. With these averments, the third respondent sought for dismissal of the writ petition.

17. Heard both sides and perused the materials available on record.

18. It appears that the petitioner is claiming to be the tenant of the subject property for years together right from her father during his lifetime entered into Oral Lease Agreement with one Scilia, D/o.Nathan and she has been residing in the subject property more than three decades and by virtue of the same, she also claims adverse possession.

19. The grievance of the petitioner is that the first respondent has issued demolition order dated 27.10.2023 without issuing any notice to the petitioner and without verification of the documents and the possession of the petitioner



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over the subject property for years together.

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20. However, according to the first respondent, on receipt of the application dated 30.12.2023 from the petitioner, a notice dated 30.12.2023 was issued to the petitioner calling upon her to furnish the documents in order to substantiate her claim and though the petitioner received the said notice on 24.01.2024, the petitioner has not submitted any document or proof in respect of her claim over the subject property.

21. Learned counsel appearing for the first respondent would submit that on verification of the Title Deeds and other documents purchased on behalf of the original owner Rose Mary Rani through the third respondent who is the Power of Attorney, the first respondent having followed due procedure and taking into consideration the dilapidated condition of the building which may endanger to the inmates of the building as well as the neighbors and also passers in that area, has rightly passed the demolition order, which requires no interference. He would also submit that if at all, the petitioner claims right over the subject property by adverse possession, the petitioner can very well approach the Civil Court and establish the same.



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22. However, the learned counsel appearing for the petitioner would contend that without issuing any prior notice to the petitioner and without verifying the actual possession over the subject property by the petitioner, the first respondent has passed the impugned demolition order dated 27.10.2023 which cannot be sustained and liable to be set aside.

23. Though the contention raised by the learned counsel appearing for the petitioner has little force, it is pertinent to note that after passing the demolition order dated 27.10.2023 when the petitioner has approached the first respondent by submitting the letter dated 30.12.2023, the first respondent has provided opportunity to the petitioner by issuing notice dated 30.12.2023 which was received by the petitioner on 24.01.2024. However, the petitioner has failed to produce any document or proof in respect of her claim either as a tenant over the subject property or by adverse possession whereas, the Power of Attorney the third respondent herein had produced all the relevant documents and the Title Deeds over the subject property and sought demolition of the building which is in dilapidated condition.

24. Therefore, considering the actual condition of the building which is in dilapidation condition, the first respondent on verification of the Title Deeds



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and other documents pertaining to the subject property, in order to avoid any untoward incident causing damage to the property and the public, having followed the procedure, passed the demolition order on 27.10.2023.

25. Even after passing the demolition order, it appears that the first respondent has provided sufficient opportunity to the petitioner to produce documents to substantiate her claim over the subject property, but it appears that the petitioner has failed to produce the same, which prompted the first respondent to proceed with the demolition of the building.

26. Therefore, this Court does not find any scope to interfere with the impugned demolition order passed by the first respondent. If at all, the petitioner claims any right either as a tenant or by virtue of adverse possession, it is always open to the petitioner to approach the competent Civil Court and establish the same and the petitioner cannot invoke writ jurisdiction and all the disputing facts involved in the writ petition required to be adjudicated by way of letting in evidence by both parties and the Writ Court cannot decide the same.

27. For the foregoing reasons, this Writ Petition is liable to be dismissed and accordingly it is dismissed. No costs. Connected Writ Miscellaneous



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Petitions are closed.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

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Chengalput Taluk & District.
- 2.The Collector,
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V.BHAVANI SUBBAROYAN, J.

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