



Cont.P.No.2165 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2024

CORAM:

THE HON'BLE MR. JUSTICE S.S.SUNDAR

and

THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

Cont.P.No.2165 of 2023

R.Hassan Ali Akbar

... Petitioner

vs.

1.Mr.Parthasarathy
The Commissioner,
Arcot Municipality,
Arcot 632 503.

2.Mrs.S.Valarmathy, I.A.S.,
The District Collector,
Ranipet District.

3.Mr.E.Kumar

4.Ms.Shakila,
Erstwhile Commissioner,
Arcot Municipality,
Arcot-632 503.

.. Respondents

Prayer: Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971 to punish the respondents for contempt of Court for having violated deliberately and wantonly the order of this Court dated 09.12.2022 and made in W.P.No.16366 of 2021.



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For Petitioner

: Mr.N.A.Nassir Hussain

For Respondents

: Mrs.S.Anitha,
Special Government Pleader for R2
Mr.P.Srinivas, Standing Counsel for R1
Mr.R.Rajarajan for R3

ORDER

(Order of the Court was made by S.S.Sundar, J.)

This contempt petition is filed alleging wilful disobedience of the directions of this Court dated 09.12.2022 made in W.P.No.16366 of 2021.

2. The petitioner filed the above writ petition for issuance of a Writ of Mandamus directing the respondents 1 and 2 to initiate action against the fourth respondent therein for demolition of unauthorized construction at Door No.44/4/3, New No.12/9, Anna Salai, Arcot District situated in Ward C, Block 4 in T.S.Nos.35/6, 37/3, 37/4 and 37/5 Arcot as per Section 216 of the Tamil Nadu District Municipalities Act. Even in the writ petition, the petitioner has stated that he is the Muttawalli of late Arcot Mohammed Khader Wakf Estate. There is no dispute with regard to ownership of the Wakf. However, the case of the petitioner in the writ petition was that the property was leased out to the fourth respondent/ third respondent herein and the fourth respondent had illegally put up commercial building in the said Wakf property without



obtaining planning permission / approval. The petitioner also produced before this Court the information obtained under the Right to Information Act from the second respondent to the effect that the building put up by the fourth respondent is without any planning permission.

3. In the said circumstances, this Court after referring to the facts had disposed of the said writ petition with the following directions:

"5.Considering the above submissions of the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents 1 & 5 and the learned counsel appearing for the respondents 2 & 4 and as per the information furnished by the 2nd respondent under RTI Act, the 4th respondent has put up building without any permission and approval, the respondents 2 and 5 are directed to inspect the building in question and if any unauthorized construction has been put up without building permission and approval, the 2nd respondent is directed to take appropriate action for demolition as per the provisions of the Tamil Nadu District Municipalities Act."

4. The present contempt petition has been filed by the petitioner in the writ petition alleging that the respondents 2 and 5 in the writ petition, namely the Commissioner, Arcot Municipality and the District Collector, Ranipet District /respondents 1 and 2 herein have wilfully and deliberately violated the order of this Court dated 09.12.2022.



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5. This Court suo motu impleaded the third respondent, namely Mr.K.Kumar, who is the fourth respondent in the writ petition and the erstwhile Commissioner, Arcot Municipality as the fourth respondent herein.

6. An affidavit has been filed by the second respondent herein viz., the Commissioner, Arcot Municipality, disclosing the following facts:

(i) Pursuant to the directions of this Court in the writ petition, notice was issued to the third respondent on 13.02.2023 for removal of unauthorized construction. However, the third respondent has submitted a letter dated 22.06.2023 enclosing a copy of the Building Permission that has been granted in the name of his father Ethiraj in the year 1979 and the approval has been granted in B.L.No.183/1070 dated 31.08.1979.

(ii) Since the third respondent has put up commercial structure in accordance with the planning permission obtained in the name of the third respondent's father, first respondent/ Commissioner, Arcot Municipality has stated in the affidavit that the building is an old building and that the construction is in accordance with the measurements set out in the building planning permission and further action is not necessary and therefore, the



first respondent has dropped further proceedings against the third respondent regarding the unauthorized construction.

(iii) The information that was provided before the writ petition was filed without calling upon the third respondent to produce the plan, but now when the notice has been issued to him, he has produced the building plan approval.

(iv) It is in the said circumstances, the first respondent tenders unconditional apology and prayed for dismissal of the contempt petition.

7. The learned counsel for the petitioner submitted that the first respondent has come up with a false case as the construction itself was put up very recently in the year 2019.

8. However, the said fact is stoutly denied by the learned counsel for the third respondent, who has submitted that the petitioner, as the Muttawalli of the Walk, has granted lease of the lands to the third respondent and had initiated proceedings for eviction. The third respondent appears to have set up title in respect of a third party and in view of such dispute, the petitioner has come up with the writ petition and contempt petition now only to evict the



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third respondent from the premises even though the third respondent is a lessee, claiming third party as the owner, who is not a party in the present proceedings. It is also brought to notice that a writ petition is pending at the instance of the rival landlord, questioning the appointment of the petitioner as Muttawalli of the Wakf.

9. In the light of the facts narrated above, this Court finds that the petitioner's lessor also appears to have moved this Court and choose to stall the eviction proceedings. Even though this Court finds no contempt, in view of the fact that the building has been put up in pursuant to the building planning permission obtained from the first respondent, liberty is granted to the petitioner to proceed for eviction in accordance with law. Therefore, the Contempt Petition is dismissed. It is open to the petitioner to seek appropriate remedy either for eviction or recovery of possession in accordance with law.

[S.S.S.R., J.][N.S., J.]
29.01.2024

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Internet : Yes / No
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To

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