



W.P.No.31363 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2024

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

W.P.No.31363 of 2022

A.Raja Mohamed

... Petitioner

Vs.

1. The Commissioner,
Mannargudi Municipality,
Thiruvarur District

2. Somasundaram

3. Raja Muhamed

4. Rajalakshmi

5. Santhi

6. Chandrasekaran

7. Ashokkumar

8. Tamilarasi

[R2 to R8 Impleaded vide order
dated 28.11.2022 made in W.M.P.
No.31458 of 2022 in W.P.No.31363 of
2022]

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the 1st respondent to initiate appropriate further action as per Section 218(3) of the Tamilnadu District Municipalities Act, 1920 in furtherance of notice in Na.Ka.No.1891/2022/F1 dated 14.10.2022.

For Petitioner : Mr.S.Parthasarathy Senior Counsel for
Mr.P.Dinesh Kumar

For Respondents : Mr.P.Srinivas for R1
Mr.B.Jawahar for R2 to R8



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ORDER

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This Writ Petition has been filed for issuance of a Writ of Mandamus directing the 1st respondent to initiate appropriate further action as per Section 218(3) of the Tamilnadu District Municipalities Act, 1920 [in short hereinafter referred to as 'Act' in furtherance of notice in Na.Ka.No.1891/2022/F1 dated 14.10.2022.

2. The brief facts of the case, as averred by the petitioner, are as follows:-

(i) On 20.01.2022, the petitioner purchased the subject property from one T.M.B.Amit Ali. Since the structure is imminently dangerous to the inmates therein, the petitioner demolished major portion after vacating the tenants. On 14.10.2022, notice was issued by the 1st respondent to the petitioner under Section 218(1) and (2) of the Act stating that the building is in dilapidated condition and as per Section 218(1) of the Act, the property ought to be fenced / repaired or taken down else action will be taken under Section 218(2) of the act.

(ii) On 21.10.2022, the petitioner sent a reply notice stating that 90% of the building has been taken down and that the remaining 1/4th can be taken down by the 1st respondent. On 30.10.2022, the Engineer surveyed the property and certified that the building is over 100 years old and in a dilapidated condition and not fit for human or animal usage. On



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02.11.2022, the petitioner sent a reminder letter stating that the time stipulated by the 1st respondent has been expired and still no action has been taken to bring down the building. Hence this petition.

3. The learned counsel appearing on the side of the 1st respondent, by way of a detailed counter, submits that the tiled building is in a very dilapidated condition and the respondent caused inspection of the building through the Town Planning Inspector and the report was submitted, wherein it is stated that the building is very damaged and cause threatening to the residents and the public. Further, notice under Section 218 of the Act was issued on 14.10.2022 and after receiving the notice, the owner of the building sent a letter dated 21.10.2022 stating that he has no objection for the building being demolished using machinery by the municipal staff. However, it was found that four families are residing in the said building and unless and until the said residents are evicted from the building, the demolition cannot be carried out. Also, the respondent has also filed civil suits against the petitioner before the competent civil court only in order to circumvent the suit, the petitioner has come up with this petition. Further, as per the provisions of Section 218 of the Act, it is the duty of the owner of the building to secure the building that is found to be dangerous for occupation and carryout the required steps to either secure the same or take down the building, thereby pleaded to dismiss the petition.



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4. The learned counsel appearing for the respondents 2 to 8 filed a counter affidavit, wherein it is submitted that the petitioner has intentionally failed to furnish the photographs of the premises under which the respondents 2 to 8 are in occupation, which would prove that the building is not in dangerous condition. Further, the respondents 2 to 8 are in possession and they are consuming electricity connection, gas connection, paying tax to the municipality. Now, the petitioner has approached this Court to direct the 1st respondent to demolish the building, under which the respondents 2 to 4 are in occupation as tenants, which is not at all maintainable in law. The petitioner being the owner of the building has to take steps in accordance with law, he cannot insist the Municipality to demolish the building.

5. That apart, the learned counsel appearing for the respondents 2 to 8 contends that the powers of the Municipality under Section 218 are subject to the rights of the tenants of the building. Further, the respondents 2 to 8 have filed photographs to show that the building is in good condition and also submits that the respondents 2 to 8 have not received any notice from the petitioner for eviction on the ground of demolition and reconstruction, thereby pleaded to dismiss the petition.

6. Heard the learned counsel on either side and perused the documents placed on record.



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7. It is pertinent to note that the petitioner herein has taken action, as per the notice dated 14.10.2022 issued by the 1st respondent under Section 218(1) and (2) of the Act by demolishing 90% of the building. Moreover, the officials of the 1st respondent inspected the subject mentioned property and submitted a report indicating that the building is in dilapidated condition, though the same has been denied by the tenants/ respondents 2 to 8 herein, on a perusal of the reports filed by the officials, it is seen that said building is in dilapidated condition. Also, the photographs filed by the respondents 2 to 8 would show that they have repainted and alleged to be in good condition.

8. Considering the facts and circumstances of the case and taking note of the fact that already civil suit is pending and the fact that the parties cannot be evicted except under due process of law, this Court hereby directs the 1st respondent / authority to initiate appropriate action as per Section 218(3) Tamilnadu District Municipality, 1920, in accordance with law, after serving notice to the parties and proceed in the manner known to law.

In view of the above, the present Writ Petition is disposed of. No costs.

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Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd

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V.BHAVANI SUBBAROYAN J.

ssd

To

The Commissioner,
Mannargudi Municipality,
Thiruvavarur District

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10.07.2024