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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2024

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 33911 of 2024

A.S.Mohamed Haris

... Petitioner

..Vs..

1. The Commissioner
Erode City Municipal Corporation
New No.246, Old No.894, Brough Road, Erode 638 001.
2. K.Kumar Murugesh
Door No.21, EVN Road, Erode-11. ... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus directing the first respondent the Erode City Municipal Corporation, to demolish the old building located at the address, "Madras Terraced", New Door Nos. 213, 215, 217, Old No. 12, EV Nanjappa Road, Erode, where the tenant, the second respondent, runs his businesses.

For Petitioner

:: Mr. Rajesh Anouar Mahimaidoss

For 1st Respondent

:: Mr. M.Rajamathivanan



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For 2nd Respondent :: Mr.M.Guruprasad

ORDER

The Writ Petition has been filed in the nature of a Mandamus seeking a direction against the first respondent/ the Commissioner, Erode City Municipal Corporation, to demolish the old building located at the address, New Door Nos. 213, 215, 217, Old No. 12, EV Nanjappa Road, Erode, where the tenant, the second respondent, runs his businesses.

2. In the affidavit filed in support of the Writ Petition, it had been stated that the aforementioned building is a Madras Terraced building aged more than 60 years. It is stated that the second respondent has been a tenancy right from 1977. It had been contended that there were proceedings relating to the tenancy. In the meanwhile, since the building was in a dilapidated condition, the petitioner had to take steps to ensure the safety of not only to the second respondent but also the general public in that surrounding area. A notice under Section 327 of the Erode Corporation Act 2008 was issued on 19.07.2018 by the first respondent to demolish the building. The second respondent however did not vacate but rather had filed O.S.No. 447 of 2018 before the District Munsif Court at



Erode seeking protection of possession. A Judgment was passed on 13.07.2022 granting injunction protecting possession but at the same time, clarifying by stating that it will not operate against the Corporation if at all they were to demolish the building.

3. The learned counsel for the second respondent pointed out that there has been no proper assessment about the nature and stability of the building by the first respondent. However, the learned counsel for the petitioner claims that as landlord and owner of the building, it is the prerogative of the petitioner to point out the nature and stability of the building and if in the opinion of the petitioner, the building requires to be demolished, the petitioner has every right to seek the assistance of the first respondent to demolish the said building.

4. It is contended that the second respondent has been in continuous possession for the past nearly 50 years and more and had not maintained the building as a responsible tenant. It is further contended that it was only owing to that aspect, did the building get damaged.

5. The learned counsel for the petitioner also stated that the report of the accredited Engineer has been enclosed which clearly



indicated that the building is in a dilapidated condition. However, I would issue a Mandamus to the first respondent/ the Commissioner, Erode City Municipal Corporation, to examine the stability of the building with the assistance of an accredited engineer and on the basis of the said report, if it is found that the building requires to be demolished, proceed further in manner known to law to demolish the building.

6. The second respondent must realise that he is a tenant and cannot dictate terms. If the building is not in a dilapidated condition, it should not be demolished, but if it is in a dilapidated condition, the second respondent has a duty to ensure that the building is actually dilapidated the other issues between the petitioner and the second respondent have to be agitated in another forum and not before this Court.

7. The Writ Petition stands allowed. No order as to costs.

8. A direction is issued to the first respondent to inspect the building on or before 31.12.2024 and depending on the nature of the report, proceed further in manner known to law but initiate further action if required on or before 10.01.2025.

16.12.2024

vsg
Index: Yes/No
Internet: Yes/No
Speaking / Non Speaking Order



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To

The Commissioner
Erode City Municipal Corporation
New No.246, Old No.894, Brough Road, Erode 638 001.



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C.V.KARTHIKEYAN, J.,

vsg

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