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W.P. No. 32722 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 32722 of 2023

M. Shenbaga Kani

... Petitioner

-VS-

1. The Commissioner,
Greater Chennai Corporation,
Ripon Buildings, E.V.R. Salai,
Chennai – 600003.

2. S.Palani

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, direction the First Respondent to consider Petitioner representation letter dated 08.11.2023 along with Engineer Report and Photos of the building and to take appropriate action to demolish the building bearing Door No. 48/2, Strahans Road, Chennai – 12.

For Petitioner : Mr. S.Bhuvaneswaran

For Respondents : Mr. E.C.Ramesh (for R1)

Mr. Ashok Menon (for R2)



W.P. No. 32722 of 2023

ORDER

WEB COPY Heard Mr. S.Bhuvaneswaran, Learned Counsel for the Petitioner, Mr. E.C.Ramesh, Learned Counsel appearing for the First Respondent and Mr. Ashok Menon, Learned Counsel appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner who claims to be the sole and absolute owner of the property bearing Door No. 48/2, Strahans Road, Chennai – 12, hade made a representation dated 08.11.2023 to the First Respondent to take appropriate action to demolish the building in that property, but as it did not evoke any response, it has necessitated the filing of this Writ Petition.

3. In furtherance to the order dated 22.11.2023 and 20.12.2023 passed by the Court, the First Respondent has filed status report dated 08.01.2024 in which it has been stated as follows:-

“5. It is submitted that, the petitioner and the 2nd Respondent were having previous dispute between them and due to which the petitioner is refusing to give the Deposit Amount which the 2nd Respondent paid for the shop. The 2nd Respondent is ready to vacate the shop once his outstanding



W.P. No. 32722 of 2023

WEB COPY

dues are paid. The personal dispute between the parties which needs to be settle between the appropriate legal forum.

6. *I submit that, based on the directions of this Hon'ble High Court on 20.12.2023, officials of the Greater Chennai Corporation inspected the mentioned property on 05.01.2024 and inspected the building. It is further states that, the building was old building and it is found to be in a dilapidated condition and causing dangerous threat to the occupants and the general public.*

7. *I submit that, based on the above inspection, and found that building causing serious threat to the public. As the Greater Chennai Corporation has no role in this, also vacating the 2nd Respondent from the petitioners building is not the work of Greater Chennai Corporation. Hence the petitioner is advised to vacate the 2nd Respondent and demolish the building by herself.”*

It is evident that as the Second Respondent is now in occupation as tenant of the property, it is incumbent upon the Petitioner to follow the prescribed procedure



W.P. No. 32722 of 2023

under the relevant statutory provisions for terminating the lease and evict the Second Respondent from that property and thereafter make an application in terms of Section 133 of the Tamil Nadu Urban Local Bodies Act, 1998, which has come into force with effect from 13.04.2023, for demolition of the building in that property. In the absence of the Petitioner complying with those mandatory requirements, the First Respondent cannot be faulted for not taking action for demolition of the building in that property.

4. In this context, reference must be made to the dictum laid down by the Hon'ble Supreme Court of India in the decision in ***Director of Settlements, A.P. -vs- M.R. Apparao*** [(2002) 4 SCC 638], which reads as follows:-

"17. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity



W.P. No. 32722 of 2023

on the part of the body or person to whom it is addressed.

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*Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (**Kalyan Singh -vs- State of U.P.** (AIR 1962 SC 1183). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law...."*

Applying the aforesaid principles to the facts of this case viz-a-viz the cogent reasons assigned for refusing to accede to the claim made by the Petitioner, there does not appear to be any justification to direct the demolition of the



W.P. No. 32722 of 2023

building in the property of the Petitioner sought in the representation dated 08.11.2023 made by him to the First Respondent.

In the result, the Writ Petition is dismissed with the aforesaid clarifications. No costs.

08.01.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 19.03.2024.

pal/gsa

To

The Commissioner,
Greater Chennai Corporation,
Ripon Buildings, E.V.R. Salai,
Chennai – 600003.



WEB COPY



W.P. No. 32722 of 2023

P.D. AUDIKESAVALU, J.

gsa

W.P. No. 32722 of 2023

08.01.2024