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Cont.P.No.100 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2024

CORAM:

THE HON'BLE MR.JUSTICE S.S.SUNDAR
and
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

Cont.P.No.100 of 2024
and Sub Appln. (OS)No.173 of 2024

Mrs. Manjula

...Petitioner

vs.

1.R.Amudha,
The Commissioner,
Mettupalayam Municipality,
104, Housing Unit,
Mettupalayam – 641 301.
Coimbatore District.

2.Ahmed Mohideen @ Babu,
*(Suo motu impleaded as 2nd respondent as per
the order of the court made in Cont.P.No.100
100 of 2024 dated 26.02.2024)*

...Respondents

Prayer: Contempt Petition filed under Section 11 of Contempt of Courts Act, 1971, to punish the respondent who wilfully disobeyed the order dated 08.01.2018 passed by the Court in W.P.No.27603 of 2017.

For Petitioner : Mr.T. Karunakaran

For Respondents : Mr.Haja Nazirudeen,
Additional Advocate General -1
assisted by Mr.B.Anand
for Municipality
Mr.T.Gowthaman, Senior Advocate
for Mr.S.Shahul Hameed for R2



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ORDER

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

This petition is filed by the petitioner alleging wilful disobedience of the order passed by this Court dated 08.01.2018 in W.P.No.27603 of 2017 by the respondents herein.

2.We have heard this matter at length. This Court after hearing the learned counsel for the petitioner in the Contempt Petition as well as the official and private respondents passed an order on 26.02.2024 in the following lines:

“2.We have heard the first respondent, namely Mrs.R.Amudha, Municipal Commissioner, Mettupalayam, who is present before this Court today. She expressed some difficulties in carrying out the demolition operations in view of the fact that the offending construction is surrounded by several constructions, which cannot be touched by the respondents in the contempt petition. Therefore, one month time is granted from today for proceeding with the demolition operations and pull down the entire structure put up by the second respondent, as directed in the order dated 08.01.2018 made in W.P.No.27603 of 2017. Since the first respondent is only the Commissioner of Mettupalayam Municipality and the



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order directing demolition has already been issued by the Commissioner of Mettupalayam Municipality, the cost of demolition should come from the second respondent, the person who has put up the unauthorized construction. The first respondent shall determine the amount that may be required to be paid by the second respondent towards the cost of demolition by adopting the rates of Public Works Department. Once the amount is determined, it shall be communicated to the second respondent and the second respondent shall deposit the said amount within a period of four weeks thereafter.”

3.Pursuant to the directions issued by the order dated 26.02.2024, the learned counsel appearing for the 1st respondent / Municipality has communicated a report to the Government Pleader with photographs to show that the unauthorized construction had been pull down by the second respondent in the Contempt Petition, who has been impleaded as a party in the Contempt Proceedings. It is also stated that without intervention of the officials, the second respondent had pull down the structure at his cost. The photographs shows the demolition of the building.

4.Learned counsel appearing for the petitioner however states that



the second respondent has retained a small portion in the building measuring about 400 sq.ft. and the said building has not been pulled down.

5.Though the learned counsel appearing for the 2nd respondent submitted that the 2nd respondent has filed a Writ Petition challenging the order passed by the first respondent for the unauthorized construction put up by the petitioner in the contempt petition, the first respondent has withdrawn the order and the learned counsel for the petitioner in WP.No.3672/2024 sought permission of this Court to withdraw the writ petition as not pressed. Learned counsel has also made an endorsement in the petition to that effect.

6.The withdrawal of the writ petition in WP.No.3672 of 2024 does not give any indication whether the proceedings has been lawfully taken against the unauthorized construction. What is applicable to the second respondent herein, should be made applicable to the petitioner herein also.

7.Learned counsel appearing for the second respondent however states that the contempt petitioner has put up a construction of about 450 sq.ft. after availing the financial assistance from the Central Government



under the Prime Minister Special Scheme.

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8.Since it is further stated that such construction upto certain extent is exempted from the purview of the Building Regulations as declared by the State Government earlier, this may also be verified by the official respondents. If there is a construction which is still in existence, the first respondent after ascertaining that the construction is exempted or a building plan permission is also obtained by the concerned individual, may pass appropriate orders after issuing notice to the second respondent in the manner known to law.

9.Learned counsel appearing for the second respondent submitted that the petitioner had put up a construction without leaving side setback in utter disregard to the building regulations. It is stated on the complaint made by the second respondent, notice was issued to the contempt Petitioner herein. However, the first respondent appears to have withdrawn the said order pursuant to the Writ Petition filed by the petitioner challenging the same.

10.In the present context, the learned counsel appearing for the second respondent submitted that the 1st respondent may further be directed to take appropriate action as against the offending construction



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put up by the petitioner herself as the second respondent has suffered a great loss despite the fact that the petitioner's construction is also offending and it affects the rights of the second respondent as a owner of neighbouring land. We may not give a positive direction in this proceedings. However, the second respondent may give a representation.

11.Considering the submissions, the first respondent may also take appropriate action against the petitioner herein, if the petitioner had also constructed a building in violation of the building regulations. If there is no side set back provided as complained, the petitioner's building is also unauthorized. However, the first respondent shall issue proper notice to the petitioner and proceed further in accordance with law within a period of sixteen weeks from the date of receipt of a copy of this order.

12.Learned counsel appearing for the petitioner brought to the notice of this Court that earlier an order was passed with reference to the same issue in 2023 and hence, there is no necessity for another order in respect of the same cause. Learned counsel appearing for the petitioner himself admits that earlier order was not complied with even though some directions were issued. In the factual context, this Court does not find any merits in the contentions that this Court cannot pass any further order because, this Court had earlier issued general directions to the first



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respondent to consider the grievance of the petitioner.

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13.With the above observations, this Contempt Petition is closed.

Consequently, connected sub application is also closed.

(S.S.S.R.,J.) (N.S.,J.)
25.03.2024

Index: yes/no
Speaking order:yes/no
Neutral Citation:yes/no
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S.S.SUNDAR, J.
and
N.SENTHILKUMAR, J.

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