



W.P.(MD)Nos.21570 and 10527 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 31.01.2025

PRONOUNCED ON : 28.04.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.21570 and 10527 of 2024

and

W.M.P.(MD)Nos.9447 and 18234 of 2024

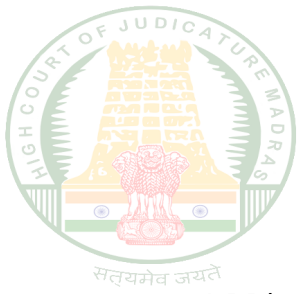
W.P.(MD)No.21570 of 2024

S.A.N.Mohamed Ali,
S/o. A. Noor Mohamed,
Represented by His Power of Agent,
Mohamed Sameem Kuthubudeen,
689, Kareemiya Street,
Podakkudi Sekarai,
Koothanallur, Thiruvavarur District.

... Petitioner

Vs.

- 1.The Commissioner,
Tiruchirapalli Corporation,
Tiruchirapalli.
- 2.The Assistant Commissioner,
Srirangam Division,
Tiruchirappalli Corporation,
Tiruchirappalli.
- 3.M/s. Modern Tools,
Represented by its Partner,
R.A. Manikandan,
Having Office At,
No. 10, Madurai Road,
Trichy.



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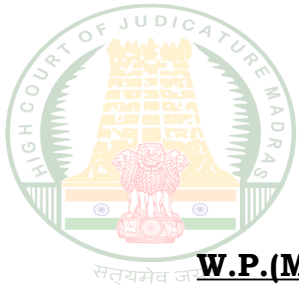
4.M/s. Aravind Agencies,
Represented by its Managing Partner,
S. Saravanan,
Having office at,
No. 10, Madurai Road,
Trichy.

5.New Pandian Agency,
Represented by its Proprietor,
B. Venkata Subramanian,
Having Office At,
No. 10, Madurai Road,
Trichy.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents 1 and 2 to demolish the dilapidated and dangerous building in ruinous condition situated at No. 10, Madurai Road, Palakarai, Tiruchirappalli District, forthwith invoking Section 136 of the Tamil Nadu Urban and Local Bodies Act, 1998, within the period that may be stipulated by this Court.

For Petitioner	: Mr.Ajmal Khan, Senior counsel, For M/s.Ajmal Associates
For R-1 & R-2	: Mr.K.R.Kishore Ram, For R.B. Law Associates
For R-3	: Mr.H.Lakshmi Sankar
For R-4	: Mr.M.Rajeswari
For R-5	: Mr.V.R.Shanmuganathan



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... Petitioner

Vs.

1.The Commissioner,
Tiruchirapalli Corporation,
Tiruchirapalli.

2.The Assistant Commissioner,
Ariyamangalam Division,
Tiruchirappalli Corporation,
Tiruchirappalli

3.B.Mohamed Yusuf

4.T.Kanagaraj

5.D.Raja

6.Elizabeth Rani

7.R.Balaji

8.K.Settu @ Kirubakaran

9.S.Mohandoss

10.G.Mathavan

11.Indirasith

12.Amsavalli

13.D.Prakash

14.Balakrishnan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the



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respondents 1 and 2 to demolish the dilapidated and dangerous building situated at Door No.145 and 145A, Jail Street, Ward No.30, Madurai Road, Tiruchirapalli District forthwith invoking Section 136 of the Tamil Nadu Urban and Local Bodies Act, 1998, within the period that may be stipulated by this Court.

For Petitioner : Mr.Ajmal Khan,
Senior counsel,
For M/s.Ajmal Associates

For R-1 & R-2 : Mr.K.R.Kishore Ram,
For R.B. Law Associates

For R-5 : Mr.J.Vishnu

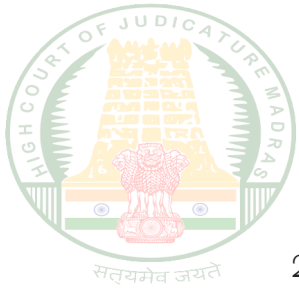
For R-11 : Mr.S.Sarvagan Prabhu

For R-3, R-4,
R-6 to R-10,
& R-12 to R-14 : No appearance

ORDER

W.P.(MD)No.21570 of 2024:

This writ petition is filed seeking to direct the respondents 1 and 2 to demolish the dilapidated and dangerous building in ruinous condition situated at No.10, Madurai Road, Palakkarai, Tiruchirappalli district, invoking section 136 of Tamil Nadu Urban and Local Bodies Act, 1998, within a stipulated period of time.



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2. The writ petitioner is the owner in title with respect to the property situated at No.10, Madurai Road, Palakkarai, Tiruchirappalli district, by the strength of registered sale deed dated 12.07.1986 and settlement deed dated 05.12.2014. Since then, the petitioner has been in continuous possession and absolute enjoyment of the said property, and the petitioner is maintaining the said property. The revenue records have also been duly mutated in the petitioner's name. The respondents 3 to 5 are the tenants of the writ petitioner. The building situated in the said property is about 110 years old. The said building is a single storeyed building, having three shops, of which the respondents 3 to 5 are the tenants in occupation. The said building is situated at the prime locality of the Tiruchirappalli Corporation City limit. Since the existing building was constructed way back before 110 years, the same is in a ruinous, damaged, and dilapidated condition and poses serious danger to the passers-by and occupiers.

3. Notices were issued to the respondents 3 to 5, requesting them to vacate the premises so as to enable the writ petitioner to demolish the building. However, the respondents 3 to 5 have refused to vacate the premises. Hence, the petitioner was constrained to file petitions in 2015 for fixation of fair rent against them before the Rent Controller (Principal District Munsif, Trichirappalli), and the same is pending. The



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petitioner has also obtained an order of eviction as against the fifth respondent, by an order dated 03.08.2012 in R.C.O.P.No.54 of 2010 on the file of the Principal District Munsif Court at Trichirappalli, in which E.P.No.81 of 2024 is filed and the same is also pending as on date.

4. That apart, the writ petitioner has also filed R.C.O.P.No.37 of 2015 on the file of the Ist Additional District Munsif Court, Trichirappalli, as against the third respondent for eviction, in which an Advocate Commissioner was appointed to note down the physical features of the property with the help of a qualified engineer and to file a report. After inspecting the property, the commissioner had submitted a report dated 21.01.2024 to the effect that the petition-mentioned building is in a dilapidated condition and requires demolition.

5. Further, the petitioner also has filed an application in R.C.O.P.No.36 of 2015 on the file of the Ist Additional District Munsif Court, Trichirappalli, for eviction of the fourth respondent and an Advocate Commissioner was also appointed in the said proceedings and he has also filed a report stating that the said building is in a very dilapidated and ruinous condition, endangering the passers-by and neighbours. Under such circumstances, the petitioner preferred a representation through his Power of Attorney on 07.06.2024 to the

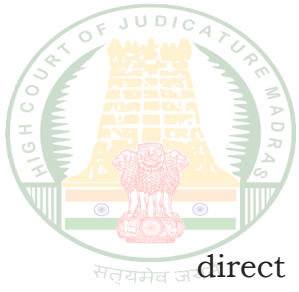


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respondents 1 and 2, requiring them to take appropriate action under the provisions of the Trichirappalli City Municipal Corporation Act, 1994.

6. Pursuant to the same, the official respondents conducted a spot visit. However, the second respondent had issued a notice dated 08.07.2024, directing the writ petitioner to obtain a stability certificate from the Public Works Department, and vacate the tenants, thereafter to take steps to demolish and remove the building, failing which, the petitioner would be held responsible for any risk or untoward incident that may happen owing to the condition of the building. Following which, the petitioner had informed the tenants, that is, the respondents 3 to 5, that the building, being in a dangerous condition, has to be taken down and requested them to vacate the premises. However, the same was not heeded by the respondents 3 to 5.

7. Pointing out Section 136 of the Tamil Nadu Urban Local Bodies Act, 1998, which empowers the first respondent to take down any structure which is in a ruinous condition or is in any way dangerous or unfit for human habitation or overcrowding in a building, for the purpose of preventing any danger therefrom to the occupiers or passersby, the writ petitioner has filed this writ petition seeking to



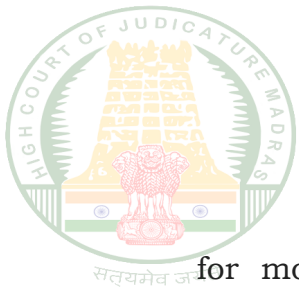
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direct the first and second respondents to demolish the aforesaid building at No.10 Madurai Road, Palakarai, Trichirappalli district, invoking Section 136 of the Tamil Nadu Urban and Local Bodies Act, 1998.

8. W.P.(MD)No.10527 of 2024:

This writ petition is filed seeking to direct the respondents 1 and 2 to demolish the dilapidated building situated at door No.145 and 145A, Jail Street, Ward No.30, Madurai Road, Trichirappalli district forthwith invoking Section 136 of the Tamil Nadu Urban and Local Bodies Act, 1998, within a stipulated period of time.

9. The petition-mentioned property situated at door No.145 and 145A, Jail Street, Ward No.30, Madurai Road, Trichirappalli district, belonged to the petitioner's father, namely, T.K.E.Mohammed Yusuf Sahib, who in turn settled the property in favour of the writ petitioner subject to the life estate created in favour of the petitioner's mother vide registered settlement deed bearing document No.973 of 1979 dated 26.04.1979. The subject building is constructed way back before 140 years, and the same is presently in a ruinous, damaged, dilapidated, and dangerous condition, posing a great threat to passersby and the occupiers. The respondents 3 to 14 are the tenants under the petitioner

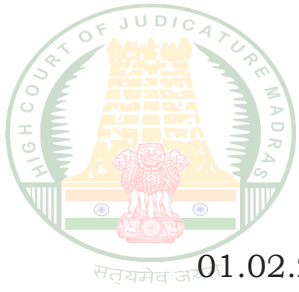


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for more than two decades. The said building is a single-storeyed building, having 4 shops, of which the respondents 3 to 6 are the tenants, and 8 residential portions, of which the respondents 7 to 14 are in occupation, and the same is situated in one of the prime localities of the Trichirappalli corporation limit.

10. The petitioner has rented out the shop Nos.2 to 6 to the respondents 3 to 7, respectively. Considering the prevailing dangerous condition of the said building, the petitioner issued a notice dated 30.12.2015 to the respondents 3 to 14, requesting them to vacate the premises so as to enable him to demolish the building. However, they have refused to vacate the premises and the respondents 7, 11 and 12 have chosen to file a suit in O.S.No.142 of 2016 on the file of the Principal District Munsif Court at Trichirappalli, for an injunction restraining the petitioner and his brothers from interfering with their peaceful possession and enjoyment, otherwise than by due process of law.

11. That apart, the respondents 8, 10, 13, and 14 have also filed a suit for a similar relief in O.S.No.152 of 2016. The respondents 7 to 14 have stopped paying rent since 2016. In the meanwhile, both the suits in O.S.Nos. 142 of 2016 and 152 of 2016 were dismissed for default on



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01.02.2023 and 20.02.2023, respectively. While being so, the petitioner received a notice dated 16.05.2023, under Section 327 (i)(ii)(iii) and 478 of the Trichirappalli City Municipal Corporation Act, 1997, issued by the second respondent, calling upon the petitioner to demolish the building immediately as it is in a very dilapidated and dangerous condition, failing which, action would be taken under Section 478 of the said Act.

12. Pursuant to the same, the petitioner duly informed the tenants/respondents 3 to 14 that the building needs to be taken down and requested them to vacate the premises. The petitioner also received a notice dated 20.06.2023 issued by the second respondent, calling upon the petitioner to show cause why the said building shall not be locked and sealed under sections 49 and 56(1) under the Tamil Nadu Town and Country Planning Act, 1972. However, the private respondents are very adamant, and they still continue to be in possession of the rented premises. Hence, this writ petition is filed.

13. The learned Senior Counsel appearing for the writ petitioners in both the writ petitions categorically submitted that, despite diligent steps taken by the writ petitioners, respectively, to vacate the tenants who are the private respondents in both the writ petitions, the private



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respondents are very adamant, and they continue to be in possession of the rented premises. However, if anything untoward happens due to the dilapidated condition of the buildings thereon, it is only the writ petitioners who will be held liable for the loss or damage whatever would be caused due to those buildings.

14. The learned counsel appearing for the fifth respondent in W.P. (MD)No.21570 of 2024 submitted that the writ petitioner along with other landlords of the property filed eviction petition in R.C.O.P.No.54 of 2010 before the learned Rent Controller, Trichy, claiming that the fifth respondent is liable to be evicted since the petition-mentioned premises is in a dilapidated condition, and the same requires demolition and reconstruction. The said eviction petition came to be allowed by setting the fifth respondent *ex-parte* on 03.08.2012. However, the fifth respondent has already filed an application to set aside the *ex-parte* order in I.A.No.128 of 2012, and the same is allowed, and the respondent has filed a counter affidavit, and the matter is already posted for enquiry. Knowing that the petitioner may not succeed in the said application, he had withdrawn the R.C.O.P., and the same was dismissed as withdrawn. Knowing fully well that R.C.O.P.No.54 of 2010 was dismissed, the petitioner suppressed the same and filed the execution petition. Based on the *ex-parte* order, the writ petitioner,



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along with others, has filed an application for execution in E.P.No.81 of 2024 on the file of the Ist Additional District Munsif Court, Trichy, and the execution application is pending on the one hand and the main application is posted for enquiry on 18.12.2024. The writ petitioner along with other landlords, also had filed another rent control petition in R.C.O.P.No.35 of 2015 on the file of the learned Rent Controller, Trichy, on the very same ground, and the same is also pending. In another application in R.C.O.P.No.45 of 2015 on the file of the Rent Control Tribunal, Trichy, for fixation of fair rent, a commissioner was appointed with an engineer and after inspection, a report has been filed reporting that the building is stable. Pointing out all these aspects during pendency of as many as applications before the learned Rent Control Tribunal, having not able to succeed in those, the writ petitioner has taken the route of seeking the respondents 1 and 2 to invoke Section 136 of the Tamil Nadu Urban Local Bodies Act, 1998, to demolish the buildings in question, and the same is not sustainable and pressed for dismissal of the writ petition.

15. The learned counsel appearing for the third respondent on the basis of the counter affidavit submitted that the points raised by the learned counsel for the petitioner as well as the pleadings of the

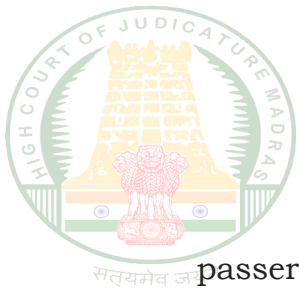


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petitioner, are factually and legally untenable. The corporation concerned has inspected the building in question and the officials of the corporation have not taken any *prima facie* opinion as if the building is in a dangerous and ruinous condition requiring immediate demolition. Therefore, they had only referred to the claim of the petitioner and had asked him to get the stability certificate from the Public Works Department and the National Institute for Technical Education, and inform the corporation and approach the corporation, after duly evicting the tenants. This portion of the response by the corporation has not been highlighted by the writ petitioner wantonly, and the last line wherein the corporation had pointed out that on failure to do this, if any untoward incident happens, the petitioner will be responsible, is being highlighted by the writ petitioners.

16. Heard the learned counsel for the petitioner, the learned counsel for the respondents and carefully perused the materials available on record.

17. The categorical contention of the counsel for the writ petitioners herein is that the respective buildings in each of the writ petitions are more than 100 years old and the same are in ruinous, dangerous, and dilapidated condition, posing a grave threat to the

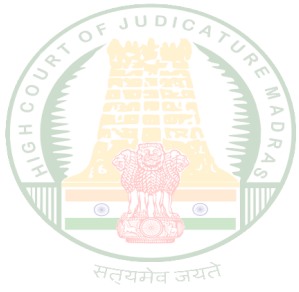


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passersby as well as the residents therein. Hence, utmost thrust has been put upon by the learned senior counsel appearing for the writ petitioners that the respondents 1 and 2 should be directed to invoke the provisions under Section 136 of the Tamil Nadu Urban Local Bodies Act, 1998, for the purpose of demolishing the dilapidated buildings immediately.

18. However, the learned counsels appearing for the private respondents categorically contended that, while the rent control proceedings are pending before the Rent Control Tribunal, the petitioner cannot seek to direct the official respondents to invoke Section 136 of the Tamil Nadu Urban Local Bodies Act, 1998, since both the Acts operate entirely in different area and the scheme of both the Acts are completely different in its scope and application.

19. However, the case of ***Abdul Khuddus vs. H.M.Chandiramani (dead) through their LRs and others in civil appeal No.1833 of 2008***, dealt with by the Supreme Court of India, has been relied upon by the learned counsel for the writ petitioner to defend the claim of the respondents, and the relevant portion of the same is extracted as follows:



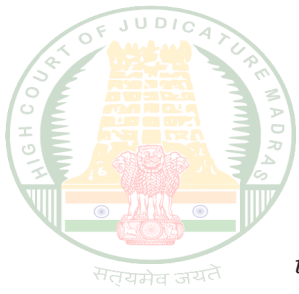
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“38.The High Court has returned a finding that the Rent Act will prevail over the Act. However, we are unable to agree with this observation. Both the statutes are enacted by the State of Karnataka. The Act deals with the Municipal functions which are wider and welfare -oriented towards the residents of the area of Corporation, whereas the Rent Act has a limited application for determining the rights of the land owner and tenant. Both operate in separate spheres as both have different objective to be achieved”

20. This Court in a writ petition in W.P.(MD)No.3023 of 2023 has dealt with a similar case, and the same was allowed in favour of the landlord by an order dated 15.02.2023 and the relevant portion of the same is extracted as follows:

“17.The Rent Control Legislation regulates the private rights of the landlord and tenant. On other hand, the Municipal Law regulates the relationship of the occupier of the property with that of the general public. When the building is in dilapidated condition and the same is likely to cause endanger only to the life and property of the occupants, the said issue could be very well be left to the domain of the rent control authorities. However, when the structural stability of a building is likely to cause endanger to the life or property of the neighbours or the general public, the Municipal Authorities cannot close their eyes and await for the verdict of the rent control authorities. Not only a public but a statutory duty is cast upon them to



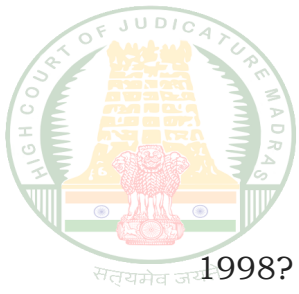
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interfere and to see that the building is stabilised or demolished so that it does not affect the life or property of the general public. Both the Rent Control Legislations and the Municipal Laws relating to the demolition of the building operate on two different fields depending upon the class of persons likely to be affected by the dilapidated nature of the building. Hence, neither there is an overlapping between two enactments nor it is a case of one enactment prevailing over the other. Both operate in their respective fields depending upon the class of persons likely to be affected by the dilapidated condition of the building.”

21. In the present case, the premises in question is a residential building consisting of residential portions as well as shops. In one of the cases, the municipal authorities have inspected the building and have required the building owner, that is, the writ petitioner, to get a stability certificate from the National Institute of Technology, Trichy. However, in the other case, the municipal authorities have not taken any call. In both cases, rent control proceedings are pending before the respective Rent Control Tribunals.

22. Now, the question which has to be decided is as to whether the official respondents 1 and 2 could be directed at the instance of the writ petitioners / building owners to invoke the powers vested upon them under Section 136 of the Tamil Nadu Urban Local Bodies Act,



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1998? The said question has been already dealt with by the Honourable Division Bench of this Court in W.P.(MD)No.6522 of 2023 in which I am one of the party and by judgment dated 27.03.2023, the Honourable Division Bench has held as follows:

“3.The contention of the petitioner is that his tenants, at least 6 in number, had filed writ petitions in W.P(MD)Nos.17863 to 17868 of 2017 challenging the said notice. This Court by order dated 20.09.2017, has disposed of the said writ petitions with the following observations:-

“3.Considering the same, without going into the merits of the case, this Court permits the petitioners to give further reply, it so advised, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the respondents 1 and 2 shall consider the same and pass orders on merits and in accordance with law. In the event of any adverse orders being passed against the petitioners, pursuant to the impugned provisional orders, the same shall not be given effect to within two weeks from the date of that order, so as to enable them to work out their remedy in the manner known to law.”

4.It is now the turn of the petitioner to approach this Court seeking a Mandamus as above stated.

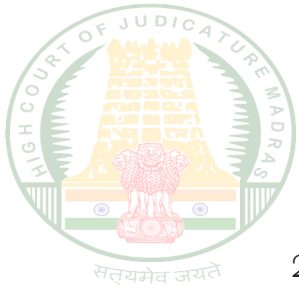


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5.To exercise or not to exercise the power under Section 296 is within the domain of the Corporation. The petitioner cannot seek the aid of this provision to evict his tenants. We cannot issue such a Mandamus, which will be in conflict with the rights of the tenants, who are occupation of the building.”

23. In a similar circumstance, even in these cases, the writ petitioners/building owners who have failed in their greatest effort to vacate their tenants despite filing applications before the jurisdictional Rent Controller. Adopting the same stance of judgment of the Honourable Division Bench extracted supra, I am of the considered view that to exercise or not to exercise the power under Section 136 of the Tamil Nadu Urban Local Bodies Act, 1998, is within the domain of the Corporation. The petitioners cannot seek the aid of this provision to evict their tenants, and hence, I am of the considered view that this Court cannot issue such a mandamus which will be in conflict with the rights of the tenants who are in occupation of the building. However, making it clear that it is for the official respondents 1 and 2 herein to take the final call. Hence, I do not find any ground for allowing the writ petition.



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24. Accordingly, the writ petitions fail and the same are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

28.04.2025

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L.VICTORIA GOWRI, J.,

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28.04.2025