

(2011) 06 MAD CK 0365

In the Madras High Court

Case No : Writ Petition No. 12433 of 2011 and M.P. No's. 1 and 2 of 2011

Kishinchand Chellarams (India) Pvt. Ltd.

APPELLANT

Vs

The Commissioner, Ootacamund Municipality, Devendra
Gupta, Arjun Gupta and Lalitha Gupta

RESPONDENT

Date of Decision : 13-06-2011

Acts Referred:

Citation : (2011) 06 MAD CK 0365

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : B. Giridhara Rao, for the Appellant; K. Sasindran, for R1 and K. Ramu, for R2 to R4, for the Respondent

Final Decision : Dismissed

Judgement

Elipe Dharma Rao, J.—This writ petition has been filed seeking to issue a writ of certiorari to call for the records pertaining to the first Respondent's impugned notice dated 4.5.2011 bearing Na. Ka. No. 7003/2010/F2 and quash the same.

2. The case of the Petitioner is that his Company has taken on lease of the premises bearing Door No. 39, Commercial Road, Ootacamund from one Abdul Rahman Sait during the year November, 1941. The Petitioner has since been in possession and enjoyment of the property. The said Abdul Rahman Sait had conveyed the said property in favour of Respondents 2 to 4 during the year June, 2006. Even after the purchase, the Petitioner has been remitting the rent in favour of Respondents 2 to 4. While the matter stood thus, Respondents 2 to 4 filed eviction and fair rent petitions against the Petitioner before the Rent Controller, Ootacamund.

3. The further case of the Petitioner is that the said petitions are pending. During the pendency of the eviction petition, the Respondents 2 to 4 have taken out an interim application in I.A. No. 153 of 2008 for appointment of Commissioner to inspect the said property and to file report on the age and condition of the said

property. On appointment, the Advocate Commissioner has inspected the said property along with the Assistant Engineer, PWD on 17.8.2009 and the Assistant Engineer has filed his report to the Commissioner on 31.12.2009 wherein he has stated that the age of the said building is 95 years old and the condition/stability of the said property is satisfactory. The Assistant Engineer has also stated that the said property is unsafe and will collapse and based on the said report, the Court Commissioner filed her report before the Rent Controller on 26.2.2010 and the Petitioner-Company has filed its objections.

4. The further case of the Petitioner is that the first Respondent issued a notice on 12.11.2010 under the Tamil Nadu District Municipality Act, calling upon the Petitioner-Company to vacate the said property as the building is unsafe for living and directed Respondents 2 to 4 to demolish the said property. In response to the said notice, the Petitioner-Company issued a reply on 27.11.2010. During pendency of the eviction petition, the first Respondent once again issued another notice dated 18.3.2011 to vacate the premises for which the Petitioner-Company issued a reply on 22.3.2011. While the matter stood thus, when one S. Mariappan, proprietor of M/s. Ganesh Stores, who is a tenant in the adjacent premises bearing Door No. 38, Commercial Road, Ootacamund, which is also owned by Respondents 2 to 4, faced the similar situation, filed W.P. No. 7454 of 2011 before this Court to quash the notice dated 18.3.2011. During pendency of the writ petition, the said Mariappan has entered into a compromise agreement with the second Respondent, agreeing to vacate the property and in terms of the said agreement, this Court, vide order dated 27.4.2011, disposed of the said writ petition and directed the first Respondent to unseal the said property to enable him to remove the goods and articles.

5. The further case of the Petitioner is that the first Respondent, at the instance of Respondents 2 to 4, issued a notice to the Petitioner on 4.5.2011 by referring to the order dated 27.4.2011 passed by this Court in W.P. No. 7454 of 2011 and stated that this Court has permitted the landlord to demolish the said property and hence the first Respondent has advised the Petitioner to get permission from the first Respondent to break the seal and remove the things within 24 hours, failing which the first Respondent would remove the things and demolish the said property. Hence the Petitioner is constrained to file the present writ petition seeking for the relief cited supra.

6. Counter affidavit has been filed by Respondents 2 to 4 denying the allegations made by the Petitioner in the affidavit filed in support of the writ petition.

7. Heard the learned Counsel appearing for the Petitioner and the Respondents and perused the materials available on record.

8. On a perusal of entire materials placed on record, we are able to see that the building in question is almost 95 years old and is certified to be a unsafe one by the Assistant Engineer, Ootacamund in his report dated 31.12.2009 in the rent control proceedings pending before the Rent Controller, Ootacamund. Based on

the said report of the Assistant Engineer, Ootacamund, no doubt, the Advocate Commissioner has filed his report before the Rent Controller, for which the objections were also filed by the Petitioner. The Petitioner wanted to impress before us that the condition of the building is so stable and nothing is unsafe there. But the photographs filed by the learned Counsel appearing for Respondents 2 to 4, by way of typed set of papers, before us would reveal that the building is in dilapidated condition and in fact, due to the recent heavy rains that lashed Nilgiris and Coimbatore, a part of the building has crumbled down. It is also seen that the Petitioner has simply kept the portion under his occupation under lock and key with no active use of the same.

9. In view of the danger being posed by the building to the life and limb of not only the occupants but also to the public in general, in the best interest of public, the first Respondent has issued the impugned notice dated 4.5.2011 to the Petitioner requiring him to immediately vacate the building. It is also seen that when similar notice was challenged by another tenant one Mariappan by way of initiating the writ petition in W.P. No. 7454 of 2001 before this Court, in view of the fact that the building is posing danger to the life and limb of the occupants, he vacated the premises by entering into a compromise with the landlord, resulting in disposal of the said writ petition by this Court by order dated 27.4.2011.

10. The Petitioner wanted to impress before us as if the said compromise entered into by another tenant is being pressed upon him by the Respondents in collusion with each other. This contention of the Petitioner is a blatant lie so as to prolong the proceedings, probably to threaten the landlord or to get some compensation or ransom from the landlord, as has been rightly contended on the part of the landlord. When the fact remains that the building is not at all in the active use and occupation of the Petitioner and a part of the building is already crumbled down, indicating that the rest of the building may also collapse at any moment, no prudent man would find fault with the action initiated by the first Respondent herein to safeguard the interest of not only the occupants of the building but also the public in general.

11. We are able to see that the Petitioner has initiated this proceedings with mala fide intention by abusing the process of law since he has not approached this Court with clean hands and facts. Therefore, this writ petition is liable to be dismissed, mulcting the Petitioner with cost.

12. In result, the writ petition is dismissed with a cost of Rs. 10,000/- to be paid by the Petitioner to the Madras Society for the Protection of Children, New No. 891, Old No. 288, P.H. Road, Old Washermanpet, Chennai - 600 021 within a period of two weeks from today. If no payment is received within the time frame, the said Society is directed to bring it to the notice of the Registrar (Judicial) of this Court, so as to take further course of action. Consequently, the connected M. Ps. are also dismissed.