
(2000) 11 KL CK 0022
In the High Court Of Kerala
Case No : O.P. No. 23944 of 2000

Sunder Raj

APPELLANT

Vs

Corporation of Cochin

RESPONDENT

Date of Decision : 10-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Municipalities Act, 1994 — Section 411

Citation : (2001) 1 KLJ 421

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : P.V. Venugopal, P.R. Jayakrishnan and E.N. Harimenon, for the Appellant; N. Rajagopalan Nair, T.T. Thomas and K. Balakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramachandran, J.—The petitioner, tenant in building No. XL-4621 in the Cochin Corporation, has filed this Original Petition challenging Ext. P1 proceedings of the first respondent-Secretary, Corporation of Cochin. Ext. P1 is addressed to Shri. Joppu Jose, who is the 3rd respondent herein. A copy of Ext. P1 had been endorsed to the petitioner.

2. By Ext. P1, the Corporation had informed the landlord Shri. Joppu Jose that the building in question situated near the Market Road, Ernakulam is in a dilapidated condition because of passage of time and pose a threat to pedestrians and nearby establishments. He had been directed that he should either demolish the building or appropriately strengthen it. He had been advised that compliance should be reported within thirty days of the date of the order, namely, 26.7.2000 and he had been warned that if he did not comply with the order, the Corporation will take steps to demolish the building under S. 411(1) and 411(3) of the Kerala Municipalities Act."

3. Consequent to this order, it appears that a notice has been issued by the third

respondent to the petitioner directing him to vacate the premises. He was thus not prepared to repair it. The petitioner had thereupon sent a lawyer's notice, evidenced by Ext. P4, projecting his objections in the matter, but nonetheless according to the petitioner, speedy steps were being taken to demolish the building and in that contingency he might have been put to considerable disadvantage.

4. In the Original Petition, the petitioner has challenged Ext. P1 order in very strong words. According to him, it showed an evil desire. The attitude of the third respondent was characterised as a secret weapon colluding with the second respondent-Town Planning Officer. The sheath anchor of his contention was that there was a petition pending as RCP No. 67/98 in the Rent Control Court. The above petition had been filed by Dr. P.J. Jose for eviction of the petitioner from the property concerned. The petitioner had been in occupation of the building from 1977 and was carrying on the business in electronic goods. Dr. Jose, according to him, had filed the petition for vacating him from the building and the reason pointed out in the petition was that he wanted to have possession of the building for conducting a Clinic he being a doctor. The petitioner submits that Dr. Jose had passed away in January, 1999 and even though the petition was continuing in the Rent Control Court, the third respondent, the son of the Doctor, had resorted to the method now employed by him through the agency of the Cochin Corporation to get the petitioner evicted from the building. It was submitted that the contention of the first respondent that the building was in dilapidated condition was incorrect. The whole scheme was pointed out as a ruse to vacate him, circumventing the provision of the Rent Control Act

5. The documents that have forthcome include the report of the Building Inspector, produced as Ext. R1 along with the counter affidavit of the first respondent. Ext. R1 shows that on the request of the third respondent the Building Inspector had inspected the premises on 11.7.2000. The report indicated that the building which had a measurement of 70 Sq. ft. was about 60 years old. The strength of the building, according to the Building Inspector, was unsatisfactory and he had referred to a situation that there were cracks on the wall and the ceiling slab and the walls were almost disjoined. It was also submitted by him in the report that the building was very close to the road and it may fall at any time. For the safety of the pedestrians as also of the tenants the building was advised to be demolished.

6. The third respondent had filed a counter affidavit wherein he had stated that the Rent Control Petition had already been withdrawn and there was no proceedings now pending before any statutory authority. He had submitted that he had approached the Corporation with all bona fides as the building posed threat not only to the family members but also to the pedestrians. He has stated that his father had filed an application before the Rent Control Court for eviction of the petitioner and it did not ipso facto lead to a conclusion that the building was not dilapidated. He strongly denied that extraneous methods have been

employed as projected by the petitioner.

7. The question to be decided is whether Ext. P1 suffers from any illegality or whether it will be possible for the petitioner to continue to occupy the building notwithstanding Ext. P1 and directions are to be issued to the third respondent to reinforce the building.

8. Both the parties had produced photographs of the building to prove its present situation. But, I do not think that it will be within the purview of this Court to pronounce upon the present condition of the building. The question is whether Ext. P1 suffers from any illegality so as to warrant interference.

9. It is admitted by the third respondent that proceedings were pending before the Rent Control Court but now that has been withdrawn. I am of the view that even when the petition is pending before the Rent Control Court, the procedure referred to in S. 411 of the Municipalities Act is independent of any such proceedings. When there is a bona fide decision taken by the Corporation, after inspection of the premises, if the building requires substantial repairs or if it is to be demolished nothing prevents the Corporation from passing such orders and unless the parties are able to show that it is without any basis or justification interference may not be warranted.

10. The contention of the petitioner now presented is that there was no notice given to him and that it has come so as to defeat him in the Rent Control Court. For these reasons Ext. P1 is under attack. He has also referred to the commission report which shows that the building is 30 years old and submits that the assessment of the Building Inspector may not be justified.

11. But the third respondent points out that the scope of the commission report relied on by the petitioner could be seen from the order itself. The antiquity of the building was not in issue at that time. The Building Inspector, who is an expert in the field, has in categorical terms indicated that there is an imminent threat as the building is in a ruinous state and a danger to passers-by. It has not been established by the petitioner that such report is unacceptable for any sound reasons. The wordings of S. 411 of the Municipalities Act does not bar an inspection of the premises, either suo motu by the Corporation or when the situation is pointed Out by a third person. Ext. R1 specifically referred to the petition filed by the third respondent. But nonetheless when a public servant has made an inspection and submitted a report, the Court cannot discard the above by adopting a stand that there were disputes between the parties. The direct effect of setting aside Ext. P1 will be that the Court will be obliged to take risk by itself, in a sensitive" issue. The authority of the officer to issue the orders also has not been questioned in this petition.

12. When there is a clear report to the effect that the building is in a dilapidated condition and is likely to cause danger to human life, to set aside such orders for any other reason whatsoever would be beyond the discretion of this under Art. 226 of the Constitution of India. In the above circumstances, Ext. R1 has to be

accepted as proper and Ext, P1 issued on the basis of such report cannot be faulted.

13. In the light of the above discussion, I hold that Ext. P1 is valid and is not liable to be interfered with. The Original Petition is dismissed. There will be no order as to costs.