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**(2014) 11 MAD CK 0553**

**Madras High Court**

**Case No:** Writ Petition No. 10569 of 2013 and M.P. Nos. 1 and 2 of 2013

P. ORR. and Sons Private Ltd.

APPELLANT

Vs

The Corporation of Chennai

RESPONDENT

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**Date of Decision:** Nov. 13, 2014

**Acts Referred:**

- Madras City Municipal Corporation Act, 1919 - Section 258, 258(1)

**Hon'ble Judges:** V. Ramasubramanian, J

**Bench:** Single Bench

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### **Judgement**

@JUDGMENTTAG-ORDER

V. Ramasubramanian, J.

The petitioner has come up with the above writ petition, challenging the notice issued by the Municipal Corporation of Chennai, under Section 258 of the Chennai City Municipal Corporation Act, 1919, calling upon them to take down the rear portion of the building in their occupation as a tenant to an extent of about 894 sq. ft.

2. Heard Mr.AR.L.Sundaresan, learned Senior Counsel for the petitioner, Mr.A.L.Somayaji, learned Advocate General, assisted by Mrs.Karthika Ashok appearing for the Respondents 1 and 2 and Mr.Krishna Srinivas, learned counsel appearing for the third Respondent.

3. The third Respondent is the owner of the land and building at Door No. 22/855, Anna Salai, Chennai-2. The petitioner is a tenant in occupation of the entire premises, for the past more than 7 to 8 decades. The building is more than about 100 years old.

4. For the purpose of the Metro Rail Project, the Chennai Metro Rail Limited (CMRL) required some portion of the building and hence the land was acquired by the Government in November 2011. After acquisition, one portion of the building was

pulled down. This resulted in a wall in the second floor of the building on the south-west corner, being demolished, forcing the petitioner to undertake some restoration work. At that time, the third Respondent (Landlord) took an opinion from the Indian Institute of Technology (IIT), Chennai, that the building had become weak.

5. On the basis of the opinion of the Indian Institute of Technology, the Commissioner of the Corporation issued a notice dated 01.04.2013 to the petitioner, calling upon the petitioner to fence off the rear portion of the building and take down the building to the extent of about 894 sq. ft., so as to prevent any damage to the remaining portions. It is against the said notice that the petitioner is before this Court.

6. The main contention of the petitioner is that the third Respondent initiated proceedings for eviction of the petitioner, way back in the year 1986, on the ground that the building was very old and weak and that it required demolition and reconstruction. But the petitioner succeeded before the Supreme Court in the decision reported in [P.ORR and Sons \(P\) Ltd. Vs. Associated Publishers \(Madras\) Limited\[OVERRULED\]](#), . Therefore, it is the contention of the petitioner that the present attempt of the third Respondent is only to achieve what they could not achieve in the previous Rent Control Proceedings. The petitioner contends that the building is very strong and that even when the Chennai Metro Rail Limited demolished one portion of the building, they did not consider the building to be weak. It is also contended by the petitioner that under Section 258(1) of the Act, the Respondents are obliged to first explore the option of securing or repairing the building before ordering the building to be taken down.

7. The first Respondent has filed a counter affidavit contending inter alia that though the front portion of the building occupied by the petitioner is an heritage building, the rear portion is not; that the rear portion of the building constructed with bricks, lime mortar and sand mortar is very old and in a bad condition; that when the Chennai Metro Rail Limited begins the work with heavy machinery and tunnel boring machines, the building would be exposed to heavy vibration, threatening its load bearing capacity; that the experts of the Indian Institute of Technology carried out an inspection at the request of Chennai Metro Rail Limited and submitted a report that the building is in a precarious condition and that based upon the report of IIT, the impugned notice was issued.

8. The third Respondent has filed a counter affidavit contending inter alia that there was no motive for the third Respondent to evict the petitioner; that after the Rent Control proceedings for eviction failed in the year 1991, the third Respondent did not take any steps to start a fresh battle; that actually the petitioner is in occupation of more than about 14000 sq. ft., out of which the portion now sought to be demolished is only about 894 sq. ft. and hence, the third Respondent will not stand to benefit in any manner by defending the impugned notice issued by the

Corporation; that as per the report of the experts of the Indian Institute of Technology, the building is in a precarious condition and if any injury is caused to persons or properties, the third Respondent would come to be blamed.

9. It appears that when the writ petition came up on 20.06.2014, S.Vaidyanathan,J, passed an order constituting a committee comprising of (1) Mr.Mohan Ramanathan, a Civil Engineer by profession (2) Mr.R.Nadimuthu, a retired Chief Engineer of the Public Works Department and (3) Mr.V.Parthiban, Advocate of this Court, to inspect the property, note down the physical features, assess the conditions of the building and to submit a report.

10. It appears that the experts were divided in their opinion. While Mr.R.Nadimuthu opined that the building is quite sound, Mr.Mohan Ramanathan opined that the structure is unsafe. The Advocate Commissioner concurred with the findings of Mr.Mohan Ramanathan. In the light of the reports of the committee constituted by this Court, I have to test the rival contentions.

11. Assailing the impugned order, it is contended by Mr.AR.L. Sundaresan, learned Senior Counsel for the petitioner (1) that the report purportedly taken from IIT for the purpose of Chennai Metro Rail Limited to carry on the work, cannot be relied upon; (2) that as per the report of the retired Chief Engineer of the Public Works Department, the building is strong; and (3) that under Section 258(1), an opportunity to secure or repair the building should be given.

12. I have carefully considered the above submissions. It is true that the assessment was made by IIT Madras at the instance of CMRL. The opinion given by IIT Madras was as follows:-

"from a life safety stand point, the remaining portion of the end and return walls are structurally in a precarious condition and pose a serious threat. Excavations for the ancillary facilities to the upcoming Government Estate Station of the Chennai Metro are expected to begin at a distance of two meters from the damaged structure. Drilling and movement of heavy equipment in the vicinity of such a damaged structure can affect its stability further".

13. Though the above assessment by the IIT Madras was made without the knowledge of the petitioner herein, I do not think that the said report can be rubbished. IIT Madras had no interest in the demolition or retention of the building. The report dated 04.09.2012 issued by the IIT Madras shows that two respectable faculty members of the Department of the Civil Engineering carried out an inspection and submitted a report. Therefore, prima facie I do not find any justification to dump the report of the Indian Institute of Technology.

14. As a matter of fact, the report of IIT does not indicate that they were aware of any previous litigation between the petitioner and the third Respondent. The Professors of the IIT are not even aware of the tenancy rights on the petitioner. This

is why, in their recommendations, the Professors of IIT had requested CMRL to issue an advisory to the third Respondent to restrict the use of some portions of the building as a precautionary life safety measure. In such circumstances, I am unable to accept the first contention of the petitioner that the report of IIT should not be accepted since it was on the basis of an inspection carried out behind their back.

15. Coming to the second contention it is seen that as per the report of the retired Chief Engineer who formed part of the three member committee appointed by this Court, the structure is strong. But at the same time Mr.R.Nadimuthu agreed with the conclusion reached by the IIT that ancillary facilities by the CMRL would have bearing on the property. The relevant portion of the report of Mr.R.Nadimuthu reads as follows:-

"Definitely I agree with the IIT report that ancillary facilities by the CMRL would have bearing on the subject property "ABCD". But from the document titled "Design Proposal and station Entrances at Government Estate Building Station by CMRL, produced during our inspection, I, could not see any details regarding the type of upcoming ancillary building, and the type of foundation that they would adopt. All information, that I, could gather from it, is the construction of subway station nearby it with raft foundations. In my opinion this would no way affect this subject property "ABCD". But, however this situation can be reviewed once again when the CMRL actually takes up the work of construction of ancillary buildings and their foundation they adopt. Till then this matter may be given quietus."

16. Therefore, the conclusion reached by Mr.R.Nadimuthu, cannot be taken to be conclusive. Moreover, he has not substantially disagreed from the findings of the IIT.

17. In contrast, the other Engineer namely Mr.Mohan Ramanathan has recorded that vibrations were felt by the entire inspection team even on account of the road traffic. He has also relied upon the National Building Code of India, 2005, to come to the conclusion that he had.

18. Though the third person of the committee is only an advocate and not a technical expert, he has concurred with the opinion of Mr.Mohan Ramanathan, for reasons recorded by him. In fact in para 4 of his independent report, the Advocate Commissioner has admitted that he is not competent to offer any technical comments on the condition or stability of the building. But he has recorded his observations to the effect that the subject portion of the building had not been maintained for a long time and it was obviously in a dilapidated condition due to poor maintenance. The building was constructed in 1873. The Advocate Commissioner has also pointed out that the report of Mr.R.Nadimuthu does not take note of the impact of the extensive construction being carried on by CMRL in close proximity to the building. The learned Advocate Commissioner rightly pointed out that even according to Mr.R.Nadimuthu, the situation had to be reviewed when

CMRL took up the work.

19. In the light of the above, I am of the view that we have to go by the majority opinion of the committee appointed by the Court. Hence, the second contention of the learned Senior Counsel for the petitioner is also rejected.

20. The third contention of the learned Senior Counsel for the petitioner revolves around Section 258(1) of the Chennai City Municipal Corporation Act, 1919. It reads as follows:

" If any structure be deemed by the Commissioner to be in a ruinous state or dangerous to passers by or to the occupiers of neighbouring structures, the Commissioner may by notice require the owner or occupier to fence off, take down, secure or repair such structure so as to prevent any danger there from"

Therefore, it is contended by the learned Senior Counsel for the petitioner that the Commissioner could have directed the building to be secured or repaired, as an alternative to take down.

21. But I do not think that the Commissioner could have explored other options, especially when a premier institution like IIT has given an opinion. Today, several heads in several departments of the Government roll, whenever a building collapses resulting in loss of human lives. Therefore, certain things cannot be left to chance. Just as we apply the precautionary principle in Environmental Jurisprudence, whenever the evil results of a project are uncertain, the Commissioner was obliged to count the adverse effects that a disaster may bring forth.

22. Admittedly, the petitioner is in occupation of more than about 14000 sq. ft. of built up area. He would not lose anything by demolishing 894 sq. ft. out of the same. The inconvenience that may probably be caused to the petitioner by losing a small portion of the building, is very insignificant, when compared to the peril to which many persons may be exposed, in the event of a disaster. Therefore, the writ petition deserves to be dismissed.

23. Accordingly, the writ petition is dismissed. There will be no order as to costs. Consequently, M.P.Nos. 1 and 2 of 2014 are closed.