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W.P.No.29319 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.03.2023

PRONOUNCED ON : 31.03.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.29319 of 2012

and

M.P.Nos.1 & 2 of 2012 & 1 of 2013

The Tamil Nadu Government Department Drivers'
Central Association, Rep. by its State President
M.Subramanai, 4/20, Major V.R.Ramanathan Road,
Chetpet, Chennai – 600 031.

... Petitioner

Vs.

1.The Chief Engineer (Building & General)
Public Works Department,
Chepauk, Chennai – 600 005.

2.The Assistant Engineer,
Public Works Department
Egmore Section, Museum Compound
Egmore, Chennai – 600 005.

3.The Assistant Executive Engineer,
North West Sub-Division,
Egmore, Chennai – 600 008.

4.The Executive Engineer,
Public Works Department,
Chennai City Division, Chepauk,
Chennai – 600 005.



5.N.Malathi

6.G.Pramila Devi

7.K.Usha

8.Nagarajan

9.Mr.K.Sagadevan

10.Mr.T.Umapathy

11.Mr.R.Somasundaram

12.Mr.A.Lakshmana Perumal

13.Mr.S.Senthil

14.Mr.A.Raghu

15.Mr.C.K.Chandran

16.Mr.A.Kumar

17.Mr.G.Rajesh Kumar

... Respondents

[R5 to R8 impleaded as per order dated 03.01.2013 in MP.No.3 of 2012 in W.P.No.29319 of 2012]

[Cause title amended as per order dated 21.02.2023 made in Memo dated 21.02.2023 in WP.No.29319 of 2012]

[R9 to R17 impleaded as per order dated 24.03.2023 in MP.Nos.2 & 3 of 2013 in WP.No.29319 of 2012]



Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to orders in (1) No. AE/Eg./2012 dated 10.05.2012 of the 2nd respondent (2) No.1911/AEE/NW/2011 dated 11.05.2012 of the 3rd respondent and (3) Na.Ka.5/1276/2012 dated 28.09.2012 of the 4th respondent to quash the same and consequently direct the respondents herein to initiate steps to evict the shopkeepers to enable the Association to utilize the entire building in Survey No.465/13, measuring an extent of 4926 sq.ft. at Egmore, for its own utility without any hindrance.

For Petitioner	: Mr.S.Ilamvaludhi
For R1 to R4	: Mr.Abishek Murthy Government Advocate
For R5 to R8	: Mr.Perumbulavil Radhakrishnan For Mr.V.R.Kamalanathan
For R14	: Mr.E.Narayanan



ORDER

The Tamil Nadu Government Department Drivers' Central Association filed the present writ petition challenging the communication issued by the Public Works Department to the petitioner and further directing the petitioner not to violate lease conditions and further evict the lessees, who all are in occupation of the Government premises without any permission from the Government. In the event of not following the conditions of lease, the Government will be forced to cancel the lease agreement entered into with the petitioner's Association.

2. The petitioner / Association is recognised by the Government of Tamil Nadu and representing the rights and interests of its members. The members of the petitioner / Association are working as Drivers in all Government Departments. The Government in G.O.Ms.No.1565, Public Works Department dated 30.11.1978 had allotted land to an extent of 4926 Sq.ft at Chetput in Survey No.465/13 belonging to the Public Works Department to the petitioner / Association by way of a lease initially for a period of 10 years with a condition that the said land can be utilised for the purpose of Association Office. The building in the Government land is to be



utilised only by the members of the petitioner / Association and there is condition stipulated that the premises shall not be used for any other commercial activities.

3. The petitioner / Association states that the present office bearers took charge in June 2011. The office bearers found that erstwhile office bearers in order to meet out the deficit of funds, rented out the portion of the premises to the Shop Keepers and advance amounts were also received from those shop keepers. The petitioner states that the authorities were also aware of the fact about leasing out the properties to the shop keepers by the petitioner / Association. In this regard, the respondent / PWD addressed several letters to the petitioner / Association to evict the shop keepers and utilise the land only for Association purposes failing which they are not in a position to extend the lease and further the Government will initiate steps to cancel the lease.

4. The learned counsel for the petitioner states that the Association has taken steps to evict the shop keepers and the shop keepers filed Civil Suits before the City Civil Court seeking permanent injunction. Some of the



Suits were dismissed and Appeal Suit has been filed and the Appeal Suit was also dismissed. The learned counsel for the petitioner states that civil cases were filed by the shop keepers and therefore, they are not in a position to evict the shop keepers immediately from the premises.

5. The 3rd respondent filed a counter affidavit objecting the contentions raised by the petitioner by stating that the Government in G.O.Ms.No.1565 dated 30.11.1978 had allotted measuring 2 grounds 126 Sq.ft to the petitioner / Association in the rental basis of Rs.5 per ground up to 08.03.1989 under Survey No.465/13. The Government imposed the following conditions in respect of the land allotted to the petitioner / Association for the purpose of using the said land only for the Association purposes, which reads as under:

- i. *If the Association proposes any improvement or extension to the Association building or any approval from the Corporation (or) CMDA necessary prior permission should be obtained from the Executive Engineer, PED, North Presidency Division, Chennai – 5.*
- ii. *Property Tax Should be paid by the Tamil Nadu Drivers Association directly to the Chennai*



Corporation.

- iii. *Water, Drainage, Electricity charges should be paid by the Association itself, consumer taxes should also be paid directly by the Association.*
- iv. *The land and buildings should be surrendered whenever the land is required to the Government.*
- v. *The land and the buildings attached thereon should be used only for the use of association. No other commercial activities should be entertained.*

6. After completion of the lease period of the Association, proposals were sent to the Secretary to Government, Public Works Department for extending the lease from 08.03.1989 to 07.03.1999 vide Chief Engineer (Buildings) Letter dated 19.05.2000. However, no orders were passed by the Government, extending the lease. The petitioner / Association has violated the Government orders by letting out commercial shops (i.e., 15 shops) in the Association premises and the authorities, during inspection, found that the commercial shops are functioning in the Government lands without obtaining any permission from the Government. Thus, the Government has also not granted extension of lease to the petitioner. Thereafter, the Assistant Executive Engineer, Egmore Section sent several communication



to the petitioner / Association on 25.06.2003, 10.05.2012, 04.06.2012, 27.06.2012 and the 3rd respondent on 13.07.2012 to vacate the commercial shops let out by the petitioner / Association in violations of the Government orders and the conditions stipulated therein. However, no action has been taken by the Association to remove the shops. Thus, based on the report of the Assistant Engineer and Assistant Executive Engineer, the Executive Engineer has addressed to the Driver's Association to vacate the commercial shops immediately, failing which the proposal for cancellation of lease will be recommended to the Government vide Letter dated 28.09.2012.

7. The respondents state that the commercial shops have not been vacated by the petitioner / Association in spite of repeated reminders from the respondents 2 to 4 and even after providing sufficient opportunities. Whenever the Government officials conducted inspection in the premises, the site officials had instructed the petitioner / Association regularly to vacate the commercial shops. The Government also has not extended the lease, which was expired in the year 1999 itself. Thus, the action of the petitioner / Association is in violation of the conditions stipulated in the



lease agreement.

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8. Admittedly, the lease expired on 08.03.1999. Extension of lease was not granted by the Public Works Department. Admittedly, the petitioner has violated the lease conditions and allowed the private shop keepers to occupy the Government land for their business purposes. Admittedly, several notices were issued to the petitioner / Association to vacate the shop keepers and to utilise the Government land only for official purposes of the petitioner / Association. The petitioner has stated that the shop keepers filed Civil Suits before the City Civil Court and Appeal Suits were also filed. However, those Suits were dismissed and even the Appeal Suits were also dismissed. Still the shop keepers are continuing admittedly and the petitioner has not vacated the shop keepers.

9. The factual background as narrated above would reveal that the petitioner / Association has committed an act of violation of the lease conditions by leasing out the Government land for their benefit without getting any permission from the Government. The Government land has been misused by the petitioner / Association in violation of the lease



conditions. Recognised Associations are provided with such Government lands only for Association purpose and the condition stipulated is unambiguous that the Association cannot utilise the Government land for any other purpose. In the present case, there is a specific condition in the Government order stating that “The land and the building attached thereon should be used only for the use of Association. No other commercial activities should be entertained”.

10. Thus, the action of the petitioner / Association in leasing out the Government land for commercial purposes to the private shop keepers are directly in violation of the conditions stipulated in the Government order. Pertinently, the lease period expired on 08.03.1999 and in view of the violations of the conditions stipulated, the Government also has not extended the lease for further period and the petitioner / Association itself is in unauthorised occupation.

11. Regarding the contentions of the petitioner / Association that they have taken effective steps to vacate the shop keepers and further the office bearers had not committed any such violation and the erstwhile office



bearers of the Association has leased out the Government land to the shop keepers, this Court has to consider the documents filed in the present writ petition.

12. One Mr.P.Nagarajan, who is a shop keeper, filed O.S.No.4855 of 2012 before the XIII Assistant City Civil Court, Chennai seeking the relief of permanent injunction. The Suit was dismissed with cost. However, the petitioner / Association and Mr.T.Jayakodi, who filed the present writ petition remained exparte and has not contested the Suit. Thus, an inference is to be drawn that the petitioner / Association and its State President Mr.T.Jayakodi, who filed the present writ petition colluded with the shop keepers by not contesting the Suit before the City Civil Court.

13. One N.Malathy, who is in occupation of the Government premises, had filed O.S.No.4857 of 2012 and the said Suit was also dismissed with costs on 20.10.2014 by the XIII Assistant City Civil Court, Chennai. Even in the said Suit, the writ petitioner / Association and its President Mr.T.Jayakodi were called absent and set exparte and they have not contested the Suit.



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14. The said Mr.P.Nagarajan, Proprietor, Sri. Venkateshwara Enterprises filed Appeal Suit in A.S.No.336 of 2015 against the judgment and decree passed in O.S.No.4855 of 2012. The said Appeal Suit was also dismissed by the IV Additional City Civil Court on 28.02.2017 and even in the Appeal Suit, the petitioner / Association and its President Mr.T.Jayakodi had not appeared and put forth their side arguments. Another Appeal Suit in A.S.No.337 of 2015 was filed by Smt.N.Malathi against the judgment and decree passed in O.s.No.4857 of 2012 and the said Appeal Suit was also dismissed by the IV Additional City Civil Court, Chennai on 28.02.2017, wherein also the petitioner / Association and its President Mr.T.Jayakodi remained absent and did not appear and put forth their side arguments.

15. The judgment and decree passed in Original Suits and Appeal Suits would reveal that the petitioner / Association has not even contested the civil cases instituted by the shop keepers. They remained exparte and even in the Appeal they have not defended the Appeal Suit. Thus, this Court is unable to accept the contentions of the petitioner / Association that they have effectively taken steps to vacate the shop keepers from the Government land.



16. Contrarily, this Court has to draw a factual inference that the petitioner / Association and its office bearers have colluded with the shop keepers and allowed them to continue in the Government land for their personal benefit, since the shop keepers are paying considerable rent towards their occupation in the Government land. The office bearers have acted for their personal gains in violation of the Government orders in force. They have committed such violations intentionally knowing the fact that the Government land cannot be leased out to commercial purposes. Thus, the office bearers and the members of the Association are responsible and accountable for such violations made for their personal benefits and from and out of such violations the office bearers of the Association have earned huge amount and they acted unbecoming of a public servant.

17. As far as the respondents 5 to 8 are concerned they are the occupants of the Government land and they claim lease right against the petitioner / Association. When the petitioner / Association themselves is an unauthorised occupant, as the lease granted to the petitioner / Association expired on 08.03.1999 itself, the respondent 5 to 8 cannot claim any right from the petitioner / Association.



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18. That apart, the Original Suits and Appeal Suits filed were also dismissed. The respondents 5 to 8 were unnecessarily implicated in the present writ petition and that itself raises a doubt in the mind of this Court that the petitioner / Association instead of vacating the shop keepers from the Government land, impleaded those persons as parties in the present writ petition knowing the fact that they are no way connected with the Government allotment in favour of the petitioner / Association nor the Government has granted any permission to the respondents 5 to 8 to use the Government land for commercial purposes.

19. The Government has rightly not extended the lease in favour of the petitioner / Association. The petitioner / Association has violated the lease conditions and leased out the Government land without the permission of the Government for their personal monetary gains and for many years they have earned lot of money from and out of the rent collected from the shop keepers and pertinently, the members of the Association were silent spectators. When the Government is allotting a land in favour of the employees Association for their office purposes, clearly stating that the



Government land cannot be utilised for commercial activities, the petitioner / Association has not only violated the conditions but also made profit from and out of the Government land, which is the public property and they have no legs to claim any extension of lease from the hands of the Government.

20. The violation of the lease conditions and leasing out the Government land for commercial activities for personal gains are misconducts under the Tamil Nadu Government Servants Conduct Rules, 1973. Even the present office bearers have not contested the civil litigations properly and remained exparte. Thus, it is to be construed that the office bearers of the Association have colluded with the shop keepers and allowed them to continue in the Government land for their monetary gains in violation of the Government orders thereby committed misconduct under the Tamil Nadu Government Servants Conduct Rules, 1973.

21. Further, the respondents 5 to 8 and other shop keepers in the Government land are to be construed as encroachers, since the petitioner / Association itself is an unauthorised occupant. As far as the Government is concerned, the shop keepers are encroachers as they have not obtained any



permission from the Government for running commercial activities. Thus, the shop keepers are to be construed as encroachers and they are liable to be evicted by invoking the provisions of the Tamil Nadu Land Encroachment Act, 1905 by the Competent Authorities.

22. In view of the gross violations of the lease conditions being committed by the petitioner / Association and considering the fact that the petitioner / Association has leased out the Government lands for their personal monetary gains and further the petitioner / Association and its office bearers have failed to contest the Civil Suits filed by the shop keepers and remained exparte would lead to an inevitable conclusion that they are not entitled to continue in the Government land anymore and the Government Authorities also have shown unwarranted leniency to the petitioner / Association instead of evicting the petitioner / Association from the Government land. The respondents have sent mere letters to the petitioner / Association as if the Government is bowing down to the illegalities committed by the Association. Such inaction of the Public Authorities are to be deprecated. The Officials are expected to perform their duties vigilantly and in the interest of public. However, in the present case,



the Officials of the Public Works Department have not acted promptly and efficiently and thereby committed an act of violation of the public rights in respect of the Government properties. Beyond everything the lease was not extended after 08.03.1999 and the petitioner / Association itself an unauthorised occupant.

23. Thus, this Court is inclined to pass the following orders:

1. The relief as such sought for in the present writ petition stands rejected.
2. The respondents are directed to evict the petitioner / Association from the subject Government land immediately, since several notices and opportunities were granted to the petitioner and more so, the lease got expired on 08.03.1999.
3. The respondents are directed to evict the shop keepers, who all are encroachers in the Government land by following the procedures as contemplated under the Tamil Nadu Land Encroachment Act, 1905.



4. The respondents are directed to conduct an enquiry in respect of the irregularities and illegalities and misconducts committed by the office bearers and the members of the petitioner / Association and thereafter, initiate appropriate departmental disciplinary proceedings against those who have misused the Government land for their personal / monetary gains and for the violations, including the irregularities and illegalities. Such an enquiry is to be conducted within a period of three (3) months from the date of receipt of a copy of this order.

5. The respondents are directed to utilise the Government land for the public purposes.

24. With the above directions, this Writ Petition stands disposed of.

However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

31.03.2023

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes



To

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Public Works Department,
Chepauk, Chennai – 600 005.
- 2.The Assistant Engineer,
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S.M.SUBRAMANIAM, J.

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