

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 15.04.2015

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

W.P. Nos.10861 to 10864 of 2015 & 10794 of 2015
& M.P.Nos. 1 & 2 of 2015

S.Rani ... Petitioner in W.P.No.10861/2015
M.Raghupathy ... Petitioner in W.P.No.10862/2015
A.Chikkannan ... Petitioner in W.P.No.10863/2015
T.Nagarathinam ... Petitioner in W.P.No.10864/2015
K.Jayadeep ... Petitioner in W.P.No.10794/2015

Vs

1.The Secretary to Government,
Department of Municipal Administration and
Water Supply,
Secretariat,
Fort St. George, Chennai - 600 009.

2.The Commissioner of Municipal Administration,
Department of Municipal Administration and
Water Supply,
Ezhilagam, Chennai.

3.The Commissioner,
Mettupalayam Municipality,
Mettupalayam.

W.P.Nos.

... Respondents in
10861 to 10864 of 2015

The Commissioner,
Mettupalayam Municipality,
Mettupalayam

... Respondent in W.P.No.
10794/2015

Writ Petition No.10861/2015 filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified Mandamus, calling for the entire records connected with the proceedings of 3rd respondent's Notices Na. Ka. No.4557/2014/A1, dated 18.3.2015, Na. Ka. No. 4557/2014/A1, dated 9.4.2015 and quash the same, consequently direct the 3rd respondent to renew the

license of petitioner for the Flower Shop No.8, Jawhar Bus Stand , Mettupalayam from 1.4.2015 to 31.3.2018 with enhancement rent in pursuant of 1st respondent's G.O. No.92 dt 3.7.2007.

Writ Petition No.10862/2015 filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified Mandamus, calling for the entire records connected with the proceedings of 3rd respondent's Notices Na. Ka. No.4557/2014/A1, dated 18.3.2015, Na. Ka. No. 4557/2014/A1, dated 9.4.2015 and quash the same, consequently direct the 3rd respondent to renew the license of petitioner for the Flower Shop No.9, Jawhar Bus Stand , Mettupalayam from 1.4.2015 to 31.3.2018 with enhancement rent in pursuant of 1st respondent's G.O. No.92 dt 3.7.2007.

Writ Petition No.10863/2015 filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified Mandamus, calling for the entire records connected with the proceedings of 1st respondent's Notices Na. Ka. No.4557/2014/A1, dated 18.3.2015, Na. Ka. No. 4557/2014/A1, dated 9.4.2015 and quash the same, consequently direct the 3rd respondent to renew the license of petitioner for the Flower Shop No.2, Jawhar Bus Stand , Mettupalayam from 1.4.2015 to 31.3.2018 with enhancement rent in pursuant of 1st respondent's G.O. No.92 dt 3.7.2007.

Writ Petition No.10864/2015 filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified Mandamus, calling for the entire records connected with the proceedings of 3rd respondent's Notices Na. Ka. No.4557/2014/A1, dated 18.3.2015, Na. Ka. No. 4557/2014/A1, dated 9.4.2015 and quash the same, consequently direct the 3rd respondent to renew the license of petitioner for the Shop No.3, Jawhar Bus Stand , Mettupalayam from 1.4.2015 to 31.3.2018 with enhancement rent in pursuant of 1st respondent's G.O. No.92 dt 3.7.2007.

Writ Petition No.10794/2015 filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified Mandamus, calling for the entire records connected with the proceedings of respondent Notices Na. Ka. No.4557/2014/A1, dated 18.3.2015, and subsequent proceedings in Na. Ka. No. 4557/2014/A1, dated 9.4.2015 and quash the same, consequently direct the respondent to Municipality extend the lease of Shop No.4 in Mettupalayam Bus Stand allotted to the petitioner for further period or to provide any alternative site/shop in favour of the petitioner.

For Petitioners in W.P.Nos. : Mr.P.Saravanan
10861 to 10864 of 2015

For Petitioner in W.P.No. : Mr.G.Sankaran
10794 of 2015

For Respondents in W.P.Nos. : Mr. V.Subbiah
10861 to 10864 of 2015 : S.G.P.- for R1 & R2

Mr.P.H.Aravind Pandian
A.A.G. - for R3
for Mr.A.S.Thambusamy

For Respondent in W.P.No. : Mr.P.H.Aravind Pandian
10794 of 2015 A.A.G.
for Mr.A.S.Thambusamy

COMMON ORDER

By consent, all the writ petitions are taken up for final disposal.

2. In Writ Petition No.10861/2015, the petitioner claims that he was a license holder to sell the parched rice (pori kadalai) in respect of Shop No.8, which is located at Jawhar Bus Stand, Mettupalayam. The area in occupation is 7 x 15 sq.ft. His license has been periodically extended and all of sudden, he received one letter dated 18.3.2015, which was received by him on 27.3.2015, calling upon him to vacate and hand over possession of the same on or before 01.04.2015, failing which license will be cancelled and possession will be taken. Challenging the same, the he has filed the writ petition.

3. In Writ Petition No.10862/2015, the petitioner claims that he was a license holder to sell the flowers in respect of Shop No.9, which is located at Jawhar Bus Stand, Mettupalayam. The area in occupation is 105 sq.ft. His license has been periodically extended and all of sudden, he received one letter dated 18.3.2015, which was received by him on 27.3.2015, calling upon him to vacate and hand over possession of the same on or before 01.04.2015, failing which license will be cancelled and possession will be taken. Challenging the same, the he has filed the writ petition.

4. In Writ Petition No.10863/2015, the petitioner claims that he was a license holder to sell the flowers in respect of Shop No.2 (vacant land), which is located at Jawhar Bus Stand, Mettupalayam. The area in occupation is 24 sq.ft. His license has been periodically extended and all of sudden, he received one letter dated 18.3.2015, which was received by him on 27.3.2015, calling upon him to vacate and hand over possession of the same on or before 01.04.2015, failing which license will be cancelled and possession will be taken. Challenging the same, the he has filed the writ petition.

5. In Writ Petition No.10864/2015, the petitioner claims that he was a license holder to run sweet stall in respect of Shop No.3, which is located at Jawhar Bus Stand, Mettupalayam. The area in occupation is 105 sq.ft. His license has been periodically extended and all of sudden, he received one letter dated 18.3.2015, which was received by him on 27.3.2015, calling upon him to vacate and hand over possession of the same on or before 01.04.2015, failing which license will be cancelled and possession will be taken. Challenging the same, the he has filed the writ petition.

6. In Writ Petition No.10794/2015, the petitioner claims that he was a license holder to run Bakery shop in respect of Shop No.4, which is located at Mettupalayam Bus Stand. He has also filed a civil suit in O.S.No.27 of 2015 on the file of the District Munsif Court, Mettupalyam praying for permanent injunction restraining the respondent-Municipality from evicting him except under due process of law and also for alternative accommodation in the event of any necessity for eviction. While so, all of sudden, he received one letter dated 18.3.2015, which was received by him on 27.3.2015, calling upon him to vacate and hand over possession of the same on or before 01.04.2015, failing which license will be cancelled and possession will be taken. Challenging the same, the he has filed the writ petition.

7. The respective learned counsel appearing for the petitioners would submit that the petitioners have not been issued with prior show cause notice and all of sudden, they were issued with letters to deliver possession of respective shops on or before 1.4.2015 failing which, lease will be terminated from 1.4.2015 and possession of shops will be taken up by Municipality. Learned counsel would further submit that the impugned proceedings are unsustainable in law and prays for interruption of this court to direct the respondents not to evict the petitioners except under due process of law

8. Mr.P.H.Aravind Pandian, learned Additional Advocate General appearing for the Municipality has invited the attention of this court to the Manual of Tamil Nadu Acts and Rules prescribed in Rule 13, which is extracted hereunder:-

13. Functions of the chairman- The chairman of the Municipal Council shall -

- (a) make arrangements for the election of the vice-chairman;
- (b) convene the meetings of the council; and
- (c) perform all the duties and exercise all the powers

specifically imposed or conferred on the chairman by this Act.

13-A. Functions of the Executive Authority - The executive authority of the municipal council shall-

(a) carry into effect the resolutions of the council;

(b) furnish to the council such periodical reports regarding the progress and in carrying out the resolutions of that body in the collection of taxes as the council may direct; and

(c) perform all the duties and exercise all the powers specifically imposed or conferred on the executive authority by this Act and subject, and subject to all to the restrictions, limitations and conditions hereinafter imposed, exercise the executive powers for the purpose of carrying out the provisions of this Act and be directly responsible for the due fulfillment for the purposes of this Act.

13 (a) Power of commissioner to suspend resolution.

He also submitted that the local body also passed a resolution on 27.1.2015 for removal of the shops. Since the said shops are causing hindrance to the movements of the public, the impugned order came to be issued.

9. The respective learned counsel appearing for the petitioners drawn attention of this court to the Full Bench decision of this court reported in 2005(2) CTC 741 (Ramaraju v. The State of Tamil Nadu, Rep. By its Secretary, Revenue Department, Fort St. George, Chennai and others) and submitted that the Municipality is required to follow the provisions contained in Public Premises Eviction Act or other appropriate law to recover possession from the person in possession in accordance with law. But, the said procedure has not been followed in the present impugned proceedings. It is the submissions of the respective learned counsel that alternative accommodation may also be provided to them, as they are in occupation of the respective shops for so many years and they are carrying on their business.

10. This court had carefully considered the rival submissions and also perused the materials placed in the judgment reported in 2005(2) CTC 741 (cited supra). The decision of the Full Bench for removal of encroachment in exercise of power under the Tamil Nadu National Highways Act, Tamil Nadu Land Encroachment Act, Tamil Nadu District Municipalities Act came for consideration. It is relevant to extract the following paragraphs:

"15. An analysis of the aforesaid provisions contained in the Act makes it clear that the primary duty of the Municipality is to maintain the road and road margins free from encroachments. However, the council in its discretion

is empowered to grant licence to owner or occupier of premises to put up verandas balconies, sunshades and weather-frames to project over a street or to grant licence for temporary erection of pandals or other structures in public street or even to lease roadsides and street margins for occupation. However, Section 183(4) makes it clear that no such permission or lease or licence would be granted if the projection, construction or occupation is likely to be injurious to health or cause public inconvenience or otherwise likely interfere with the users of the road as such. Section 183(6) empowers Executive Authority to remove any projection or constructions at the cost of the concerned licensee after expiry of the period of licence even without notice to such licensee.

18. A related question which arises for consideration is relating to the tenor of the notice or the nature of the notice. It is apparent that in the recent spate of removal of encroachment, the so-called notice appears to be announcement through public address system or through beat of drums or by general notice in newspapers. To say the least, the above method adopted by different municipalities cannot be said to be in consonance with the requirement of law. As observed by the Supreme Courts in the decision Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan, AIR 1997 SC 152, a person would be entitled to reasonable notice. The said case related to removal of some pavement dwellers who had constructed huts on the pavement within Ahmedabad Municipal Council. In the said case, notice of 21 days had been issued which was found to be reasonable. However, in paragraph 9 of the judgment, the Supreme Courts has observed that a notice of two weeks or 10 days may be held as sufficient.

19. We are inclined to hold that notice would ordinary envisages a notice in writing to be served on the person concerned and giving of two weeks notice can be construed as reasonable. Even though the Municipalities Act does not contain any specific procedure relating to the nature and service of notice, the provision contained in Madurai City Corporation Act regarding notice in writing can be adopted. Notice by any other means, such as through public announcement or by beating of drums may prove to be illusory and therefore should be avoided. If the person avoids to receive notice, affixture of the written notice on the offending structure in question can be adopted.

20 ... The Courts is not expected to arrogate to itself

the discretionary power of the concerned authorities, nor the Courts can be expected to remain as a silent spectator if it is found that the concerned authorities have abdicated their function. However, as already pointed out, no general rule can be laid down in such matters.

27. Next comes the question relating to removal of encroachments on lands which do not form part of the road or roadside land or street margins. So far as the Municipalities are concerned, apart from the streets and roads which vest in the municipality, there may be certain other lands which are not part of the road or street, but which vest in the municipality. In respect of such land encroached upon by an encroacher, it is obvious that the municipality is required to follow the provisions contained in Public Premises Eviction Act or other appropriate law to recover possession from the person in possession in accordance with law. However, the municipality is not expected to take the law into its own hand and forcibly evict the trespasser by misconstruing the observation made in the order of the Division Bench. Rule of law is required to be followed. The definition clause under Section 2(e) (ii) of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 takes within its sweep any land or building belonging to the Municipality. It is therefore obvious that recourse can be had to the provisions contained in the aforesaid Act. Where, however, there is bona fide and serious dispute to the entitlement, of the municipality, the summary procedure contemplated under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 may not be applicable and the municipality would be required to recover possession through a Civil Courts.

31. In course of hearing, learned counsel for the petitioners had emphasised that many of the occupants were assessed to property tax by the Municipalities and had been given water connection and electricity supply. If the occupation of a person is unauthorised, merely because such a person is asked to pay property tax or is given water connection or electricity supply, such unauthorised occupation does not become authorised. Payment of property tax or provisions for water connection or electricity can at best be construed as evidence of possession of a person, but such payment of property tax or provision of water connection or electricity does not legalise the occupation, if such occupation is otherwise unauthorised.

32. So far as the claim of the petitioners not to be

evicted unless provision is made for their rehabilitation or alternative accommodation, it is obvious that no such specific direction can be given. Rehabilitation cannot be made a condition precedent. As a matter of fact, such a plea was not accepted by the Supreme Courts in Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan MANU/SC/0051/1997. However, since it has been observed that procedure contemplated under law is to be followed, it would be always open to the individual so aggrieved to put forward his grievance before the appropriate authority. If a person has acquired prescriptive right over a land, other than road or road margins or road side land, it would be always open to such person to resist the eviction by establishing his right. Even in case where person has not acquired any prescriptive right, the matter has to be considered by the appropriate authority. No specific or general direction can be given by the Courts laying down that a person, liable to be evicted has a right to be rehabilitated. However, we must hasten to add, that as observed by the Supreme Courts, it is always open to the appropriate authority to prepare any particular scheme for rehabilitation depending upon the facts and figures in a particular case and of course depending upon the financial resources of the concerned authority.

11. It is pertinent to point out at this juncture that though there are very many laws available to protect the interest of the encroacher, except under Order 39 Rule 1 and 2 and Section 6 of the Specific Relief Act, no other similar provisions are available to the persons, who derive title through legal means.

12. It is brought to the knowledge of this court by the learned Additional Advocate General that local body has passed a resolution as early as on 27.1.2015 for removal of the shops. Further, the petitioners also put on notice about the eviction of their respective portion in advance.

13. This court finds considerable force in the submission made by the learned Additional Advocate General. Admittedly, the local body took steps for eviction of the shops occupied by the respective petitioners, to whom license have been granted, for demolishing the building, for better public use as well as free flow of vehicular traffic and enable the public to use the road properly and this court cannot find fault with the said action as it is in public interest. The 3rd respondent is under mandate to carry out the resolution of the local body and it cannot be found fault with. This court, taking into consideration the plea made by the respective learned counsel appearing for the petitioners that the petitioners

are in occupation of the premises for so many years and their livelihood would be affected if they are vacated from the said premises, all of a sudden, is of the view that sufficient time is to be granted to them to vacate and deliver possession of the respective shop, subject to the filing affidavits of undertaking before this court.

14. In the result, the writ petitions are dismissed and the respective writ petitioner is granted ten weeks time from today on executing affidavit of undertaking stating that they will vacate and deliver vacant and peaceful possession of the respective shop in their possession on or before 30.06.2015 and till then they continue to pay the existing license fee on time and on vacating the respective shop in their possession, deposits paid by them shall be refunded to them, in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

For filing affidavits of undertaking, call on 22.04.2015.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rj
To

- 1.The Secretary to Government,
Department of Municipal Administration and
Water Supply,
Secretariat,
Fort St. George, Chennai - 600 009.
- 2.The Commissioner of Municipal Administration,
Department of Municipal Administration and
Water Supply,
Ezhilagam, Chennai.
- 3.The Commissioner,
Mettupalayam Municipality, Mettupalayam.
- 4 cc to Mr.P.Saravanan ,Advocate, SR.No.20787
- 1 cc to Mr. G.Sankaran,Advocate, SR.No.20873
- 1 cc to Mr. A.S.Thambusamy,Advocate, SR.No.5402

W.P. Nos.10861 to 10864 of 2015 & 10794 of 2015
& M.P.Nos. 1 & 2 of 2015

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