

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **25.10.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.1696 of 2014 and
M.P.No.1 of 2014

1.The Neyveli Lignite Corporation Limited,
Represented by its General Manager/
Township Administration, Block No.10,
Neyveli - 607 803.

2.The Estate Officer/Eviction Authority,
Neyveli Lignite Corporation Limited,
Neyveli - 607 803.

...Petitioners

versus

RoopamOberoi

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order of the Hon'ble District Judge, Cuddalore, dated 20.01.2014 in C.M.A.(CS) No.35 of 2013.

For Petitioners : Mr.N.Nithianandam

For Respondent : Mr.P.Karlmarx

ORDER

The first petitioner considered the representations submitted by the respondent, dated 02.01.2006 and 11.02.2013, pursuant to the order dated 03.01.2013 in W.P.No.18748 of 2007 and rejected the request for revision of the Scheme and reduction of rent. The

communication sent by the first petitioner, rejecting the representations was treated as an order passed under the provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short "the Act 1971"), by the respondent, resulting in filing an appeal before the learned District Judge, Cuddalore under Section 9 of the Act 1971.

2. The petitioners filed an interlocutory application before the learned District Judge, to decide the maintainability of the appeal. The learned Judge passed an order that Civil Miscellaneous Appeal is maintainable. The order dated 20.01.2014 is under challenge at the instance of a Public Sector undertaking.

3. I have heard the learned counsel for the petitioners. None appeared on behalf of the respondent.

4. The respondent issued a lawyer notice to the petitioners, calling upon the Corporation to revise the rent payable by the members of the Society doing business in Neyveli Township. Since the representation was not considered, the respondent filed a writ petition in W.P.No.18748 of 2007. The learned Judge granted liberty to the respondent to file a fresh representation. The petitioners were directed

to dispose of the representation on merits. Thereafter, a fresh representation was given by the respondent on 11.02.2013. The representation was rejected by the first petitioner.

5. The representation was not given by invoking the Act 40 of 1971. It was a simple non-statutory representation given to the Corporation to reduce the rent. There was no statutory obligation on the part of the Corporation to consider the representation, which was given by the Association of merchants. However, the Corporation considered the representation, in view of the direction issued by this Court in W.P.No.18748 of 2007.

6. The communication rejecting the representation was challenged by the respondent before the learned District Judge, Cuddalore, as if it was an order passed under the provisions of the Act 40 of 1971.

7. Before the learned District Judge, the petitioners made it very clear that it was not an order within the meaning of Act 40 of 1971, and as such, there was no question of invoking Section 9 of the said Act, to file an appeal.

8. The learned District Judge, proceeded as if the petitioners initiated action under the Act 40 of 1971, and as such, the appeal is maintainable. The learned District Judge, miserably failed to consider the material fact that a non-statutory representation would not give right to invoke the provisions of the Act 40 of 1971 to file an appeal.

9. There should be a valid order passed under Section 7 of Act 40 of 1971 to give right to file an appeal under Section 9 of the said Act. When it is made clear that there was no order passed under Section 7 of the Act, by the petitioner, the learned District Judge was not correct in concluding that the appeal under Section 9 of the Act 1971, is maintainable.

10. It would not be possible to the petitioners to pass an order under Section 7 of the Act against a Society. Action for eviction can be taken only against the individual licensees. No such proceedings were taken by the petitioners. In fact, the petitioners have not taken any proceedings for eviction. It was only the respondent, who moved the petitioners by a representation in exercise of the liberty granted by this Court in W.P.No.18748 of 2007. The first petitioner considered the

representation in obedience to the order passed by this Court and rejected it on merits. Such rejection would not give right to the aggrieved to file an appeal under the provisions of Act 40 of 1971. This aspect was not considered by the learned District Judge. I am therefore of the view that the impugned order is liable to be set aside.

11. In the result, the impugned order dated 20.01.2014 is set aside by holding that the Civil Miscellaneous Appeal is not maintainable against the rejection of representation.

12. The Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

25.10.2016

Index:Yes/No
svki

To

The District Judge, Cuddalore

K.K.SASIDHARAN, J.

(svki)

For pronouncing orders in

C.R.P.(P.D.) No.1696 of 2014

25.10.2016

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