

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2016

CORAM:

THE HON'BLE **Dr. JUSTICE S.VIMALA**

CRP(NPD)No.794 of 2016

Velumani Petitioner / 4th defendant

..VS..

R.Purusothaman (died)

1. R.Mani

S/o.Ramakrishna Naidu

P.Kamalam (died)

W/o.R.Purusothaman

2. P.Venkatapathy

S/o.R.Purusothaman

3. D.Jayasree

4.V.Kamalam

W/o.Late Venkitasamt Naidu

.... Respondents/Landlords

This Civil Revision Petition filed under Article 227 of Constitution of India, seeking direction to the Principal District Munsif, Coimbatore, to hear and dispose of I.A.No.602 of 1991 in O.S.No.77 of 1979 within a time frame fixed by this Court.

For Petitioner : Mr. S.Mukunth

ORDER

"Justice without power is inefficient, power without justice is tyranny" - Justice Felix frankfurter

1.1. The instant case demonstrate how justice become inefficient for want of exercise of power by the court and the power without justice exerted (by the letter-monger) upon the court became a tyranny.

1.2. The fourth defendant in O.S.No.77 of 1979 is the revision petitioner.

Brief Facts:

2. Mr.R.Purusothaman and Mr.R.Mani filed the suit (as plaintiffs in O.S.No.77 of 1979) seeking the relief of recovery of possession of the properties described in the schedule to the plaint which were in the occupation of 33 defendants.

2.1. The defendants claimed rights under the Tamil Nadu Act 7 of 1922, i.e., City Tenants Protection Act (hereinafter referred to as "the Act"). The plaintiffs were willing to concede the rights of the defendants under the Act and expressed their willingness to receive the compensation, at the market rate, as may be determined by the Court.

2.2. Thereafter, Advocate Commissioner was appointed to fix the value of the property and ultimately, the lower Court fixed the market value at Rs.15,000/- per cent, taking 3.4.1979 as the

relevant date for fixing the market value.

2.3. Aggrieved over the market value fixed, the defendant preferred an appeal.

2.4. The appellate Court remanded the matter for fresh disposal in the light of the decision reported in **1980 2 MLJ 303 (Arasan Chettiar vs. SP.Narasiman Estate)**.

2.5. The order of remand was under challenge in CRP.Nos.3654 to 3670 of 1985. By the order dated 24.12.1986, the revision petitions were allowed and order of trial Court was restored.

2.6. The plaintiff R.Purusothaman died on 24.02.2004. Respondents 3 to 6 were added as legal representatives of the deceased first plaintiff. During the pendency of the proceedings, the sixth plaintiff R.Kaveriammal died on 17.11.2004. Thereafter, the seventh plaintiff Kamalam was impleaded as legal representative of the sixth plaintiff.

3. The fourth defendant Velumani filed I.A.No.602 of 1991 in O.S.No.77 of 1979, under Section 9(3)(a) of the Madras City Tenants Protection Act, seeking direction to the respondents/plaintiffs to execute the sale deed in favour of the

petitioner. This application is dated 27.11.1991.

4. By the order dated 31.07.2003, the Court has passed the order directing the respondents to execute the sale deed. The specific order is that, as the tenant has deposited the entire amount of compensation of Rs.34,603.50 (at the rate of Rs.34.50 per sq. ft. and in respect of 1,003 sq.ft), and as it has been received by the owner of the property, the plaintiffs were directed to execute the sale deed within a period of one month and in the event of respondents / plaintiffs failing to execute the sale deed, the Court itself would execute the sale deed.

5. By the order dated 23.03.2010, the Court has observed that the respondents/defendants has not executed the sale deed in one month and that fair sale deed has already been filed and the matter should be called on 31.03.2010.

6. On 31.03.2010, the Court has made the following order:

"The respondent's counsel sent a **registered letter** to this Court stating that Court has (is) acted in

favour of the petitioner side against the interest of the respondent. Therefore, letter to District Judge to transfer the matter to some other Court by 13.04.2010.

Memo filed for petitioner recorded."

6.1. Thereafter, from 13.04.2010 the matter has been adjourned awaiting orders from the District Court, Coimbatore.

7. The petitions making accusations are made with a calculated attempt to stall the proceedings. The object with which the petitions are sent is achieved, if the Presiding Officers adjourn the matter, being scared of those kind of petitions. That happened, squarely on the expected lines in this case.

8. Per contra, the Presiding Officer should not have forwarded the letter to the District Court solely with the intention of proving his credentials, beyond the shadow of doubt. Had he intended to affirm his integrity, he should have chosen to speak with his judgment and not through this masterly inaction. If the case had been given finality by judicial process, it would have indirectly defeated the veiled attempts of the respondent's counsel.

9. The higher Courts, in their supervisory jurisdiction ought to have acted in a sane and sensitive manner and not on mindless mechanical passion. But, even a scrap of paper is suffice to rob a fortnight sleep of a Judicial Officer and "call for explanations" are ordered without any kind of mean scrutiny or a casual glance of the contents of the alleged communication. Such intimidating circumstances might have driven the judicial officer in this case to communicate the letter casting aspersions on him.

10. "Power is "the ability to affect another by its exercise". Power has a close interrelation with the law. So the role of power in creating, supporting, and changing or subverting law is very obvious. The procedural procrastination resulting from the unwitting adventure of the Judicial Officer has caused unaccounted adjournment of the case for six years since 2010. The power of the Judicial Officer has been sacrificed and even abdicated and abandoned at the alter of intimidation. The Judicial Officer has miserably failed in his duty, bound by the oath, he took on his assumption thereby putting the case of the litigant in cold storage.

11. These adjournments, indefinite for the unlimited period

and definite being in the grant only, have driven the fourth defendant to file this Civil Revision Petition, seeking direction for expeditious disposal of I.A.No.602 of 1991 in O.S.No.77 of 1979.

12. It is a case where the claim of the fourth defendant seeking protection under City Tenants Protection Act and seeking sale of property in favour of them has been conceded by the plaintiffs themselves. In any event, the matter has attained finality, when the trial Court order has been confirmed by this Court on 24.12.1986, in the Revision Petition Nos.3654 to 3670 of 1985. For no reason, the matter is limping for decades together.

13. It is unfortunate that the trial court/executing court is awaiting orders of the District Court eternally, i.e. from 31.03.2010. It is not as if that any transfer petition was pending before the District Court or an order of stay has been granted by the District Court. Based upon a mere registered letter sent by the Counsel for the respondent which clearly amounts to contempt of court, the Court has waited for a period of six years awaiting reply from the District Court. This condition also reflects the intimidating circumstances under which the subordinate judiciary is functioning.

However, when there is an oath taken by the Judicial Officer to discharge the duties without fear or favour, it is unnecessary for Judicial Official to have waited for the orders of the District Court. It is equally painful to note that the learned District Judge also did not come to the rescue of the Officer, who wrote the letter either directing the officer to proceed with the matter or by ordering transfer of the case. Ultimately, what could not be achieved directly has been achieved indirectly by sending unwarranted letters casting aspersions on the conduct of the Judicial Officer.

14. The identification of redressable injustice is not only what animates us to think about justice and injustice, it is also central to the theory of justice. The justice which has eluded the defendant for the past six years, ought to be offered to him instantly without any further delay. The seeming absence of any valid defence on the part of the plaintiff coupled with his adventure or nay misadventure encourages this Court to come with the conclusion that the defendant deserves redressal of injustice, thereby the execution of decree and consequently conveying the title thereof. On this count, no further notice appears to be necessary and that alone would defeat the delayed justice. As the plaintiff has already

received the entire compensation and as the plaintiff did not obey the orders of the Executing Court, when he was directed to execute the sale deed, now the entire responsibility is vested only with the Executing Court to execute the sale deed. Therefore, the Trial Court / Executing Court will execute the sale deed, within a period of two weeks from the date of receipt of a copy of this order, and to get the property registered in favour of the Revision Petitioner.

15. With the above direction, this Civil Revision Petition is disposed. No costs.

26.04.2016

ogy / srk

To

The District Munsif Court, Coimbatore.

S.VIMALA, J.,

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