

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.08.2016

CORAM

The Honourable MR. JUSTICE N.KIRUBAKARAN

W.P.Nos.29299 to 29309 of 2016
and W.M.P.Nos.25327 to 25337 of 2016

Mr.Ravikumar	... Petitioner in WP 29299/16
Shanmugam	... Petitioner in WP 29300/16
Wadood	... Petitioner in WP 29301/16
Irudhayasamy	... Petitioner in WP 29302/16
Mubarak	... Petitioner in WP 29303/16
Rani Jayaraman	... Petitioner in WP 29304/16
Charles Rajkumar	... Petitioner in WP 29305/16
Pangajam	... Petitioner in WP 29306/16
Chander Rao	... Petitioner in WP 29307/16
Bhuvaneshwari	... Petitioner in WP 29308/16
Donald	... Petitioner in WP 29309/16

Vs

The Commissioner
Udhagamandalam Municipality,
Udhagamandalam,
The Nilgiris

.... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to forbear the respondent from evicting the petitioner from his residential premises bearing Door No.12/14, EB Line Udhagamandalam in WP.29299/16, No.161/97, R.K.Puram, Udhagamandalam in WP 29300/16, No.5/48, Mel kanadiyar Street, Baby Hall, Kandel Udhagamandalam in WP.29301/16, No.46/25, Slaughter House, Udhagamandalam in WP.29302/16, No.119, Upper Bazaar, Udhagamandalam in WP 29303/16, No.157/91, R.K.Puram Udhagamandalam in WP.29304/16, NO.72/150, willow Bund, Udhagamandalam in WP.29305/16, No.130/56, Upper Bazaar, Udhagamandalam in WP.29306/16, No.128, Upper Bazaar, Udhagamandalam in WP.29307/16, No.71/147, willow Bund, Udhagamandalam in WP.29308/16, No.50, Mel Kanadiyar Street, Kandel, Udhagamandalam in WP.29309/16, The Nilgiris, without following due process of law.

For Petitioner : Mr.L.Mouli

For Respondent : Mr.P.Srinivas

COMMON ORDER

These writ petitions have been filed for the issuance of a writ of mandamus to forbear the respondent from evicting the petitioners from their respective residential premises, without due process of law.

2. Heard the learned counsels on either side and perused the materials available on record.

3.1 The petitioners are in occupation of the buildings which are under the control of the respondent Municipality. The petitioners ancestors were employed by British regime and they were allotted quarters calling as model building in Udagamandalam. After the death of their father or grand father, the petitioners are residing in the premises in question, even though they are not the employees of the Municipality.

3.2 Earlier, the Municipality, tried to enhance the rent, which was challenged by the Udhagai Nagaratchi Kudiruppugalil Kudiruppor Nala Sangam in W.P.No.29299 of 2016, wherein, an interim order was passed. Challenging the same, the said Sangam, preferred an appeal in W.A.No.1406 of 2004 and this Court, by Judgment dated 20.10.2008, while disposing of both the writ appeal and the writ petition, gave a direction to the Commissioner to conduct an enquiry and if the buildings are not occupied by the tenants, liberty was given to take action to vacate those persons from the premises. Subsequently, on 02.02.2016, an order was passed by the Commissioner, directing the occupants to vacate the premises, which was challenged by the said Sangam in W.P.No.16880 of 2016 and this Court, by order dated 29.04.2016, set aside the said order dated 02.02.2016 and directed the respondent to pass a speaking order. Consequently, notices have been issued to vacate the premises in question, which compelled the petitioners to approach this Court by filing these writ petitions.

4. The learned counsel for the petitioners would submit that the premises in question is the public premises and hence the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 (hereinafter referred to as "the Act") is applicable. According to the learned counsel, as per Section 4

of the said Act, a notice has to be issued to the occupants and only after getting a reply from the occupants, eviction order has to be passed under Section 5 of the Act. But, as far as the cases on hand are concerned, no notice whatsoever has been issued.

5. On the other hand, Mr.P.Srinivas, learned Counsel appearing on behalf of the respondent Municipality would submit that only pursuant to the orders passed by this Court, the notices been issued to vacate the premises. The learned counsel would further submit that in any event, the said notices may be directed to be treated as show cause notices issued under Section 4 of the Act and the respondent Municipality would follow the provisions of the Act.

6. A perusal of the records would show that the premises under the occupation of the petitioners are public premises, which are under the control of the respondent Municipality. The respondent Municipality require the buildings for allotment of the same to their employees, as the petitioners are not their employees. Therefore, the notices have been issued to the petitioners or their relations as the case may be. In any event, since it is public premises, the provisions of the Act have to be followed. As rightly pointed out by the learned counsel for the petitioners, a show cause notice is mandatory under Section 4 of the Act before passing an order under Section 5 of the Act. At this juncture, it is relevant to extract below Section 4 of the Act.

"4. Issue of notice to show cause against order of eviction:- If the estate officer is of the opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the estate officer shall issue, in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall -

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned that is to say, all persons who are, or may be, occupation of, or claim interest in, the public premises, to show cause, if any against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.

(3) The estate officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

(4) Where the estate officer knows or has reason to believe that any person is, in occupation of the public premises, then, without prejudice to the provisions of sub-section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed".

Taking into consideration the earlier round of litigation and various attempts made by the Municipality to vacate the petitioners and similarly placed persons, it is appropriate to treat the notices already issued as notices issued under Section 4 of the Act. Further, as per Section 4(2)(b) of the Act, 10 days is granted for giving a reply.

7. Therefore, this Court directs the petitioners as well as the respondent Municipality to treat the notices already issued to the respective petitioners or their relations as the case may be, as notices issued under Section 4 of the Act and the petitioners are directed to give a reply within 10 days from today. On such reply being received by the respondent from the petitioners, the respondent is directed to consider the same and pass orders under Section 5 of the Act within a period of six weeks thereafter. Till such an order is passed under Section 5 of the Act by the respondent, the petitioners' possession shall not be disturbed.

The writ petitions are disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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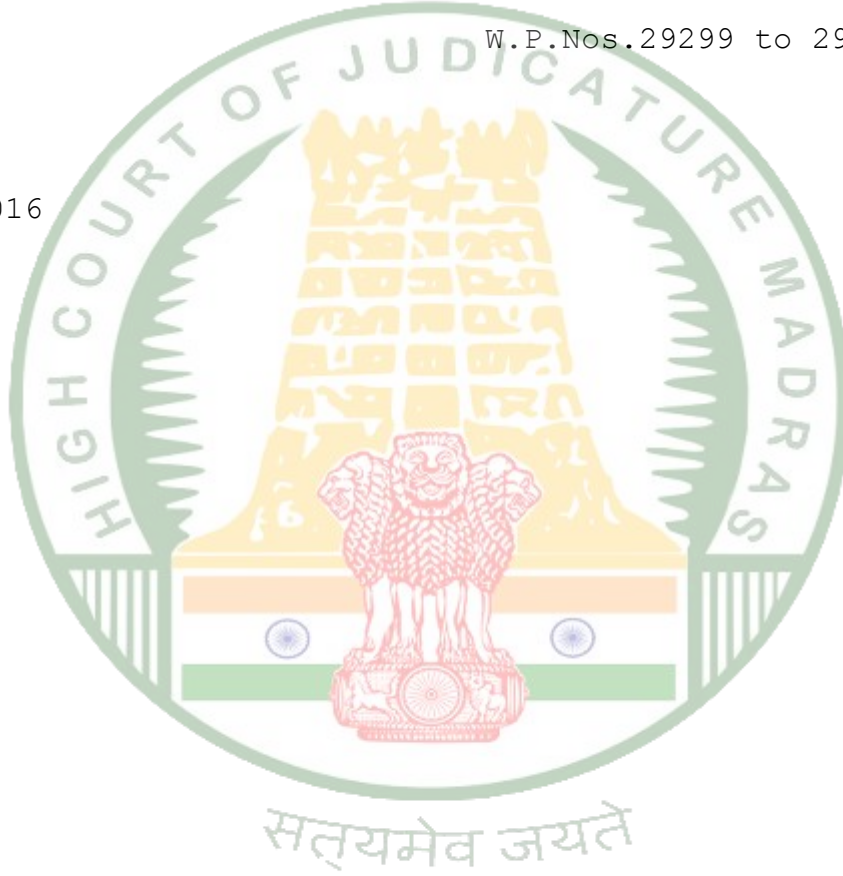
To

The Commissioner
Udhagamandalam Municipality
Udhagamandalam
The Nilgiris

+1 cc to M/s.P.Srinivas Advocate sr 48113
+11 ccs to Mr.L.Mouli Advocate sr 48232 to 48242

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