

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.11.2016

CORAM

The Honourable MR. JUSTICE N.KIRUBAKARAN

W.P.No.39080 of 2016
and W.M.P.No.33472 of 2016

Rathanavathiammal

[Petitioner]

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 certiorari to call for the entire records relating to the respondents impugned notice dated 28.06.2016 in Na.Ka.No.3397/2005/A9 and quash the same,.

For Petitioners : Mr.L.Mouli

For Respondent : Mr.T.M.Pappiah, SGP

ORDER

The writ petition has been filed challenging the impugned notice dated 28.06.2016.

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

3.1 The petitioner is in occupation of the building which is under the control of the respondent Municipality. The petitioner's 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 petitioner is residing in the premises in question, even though she is not the employee 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.3397 of 2004, 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, the present impugned orders have been issued directing the respective petitioners to vacate the premises in question. Challenging the same, the petitioners are before this Court.

4. The learned counsel for the petitioner 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 case on hand is concerned, no notice whatsoever has been issued. Hence, the impugned order is liable to be set aside.

5. On the other hand, learned counsel appearing on behalf of the respondent Municipality would submit that only pursuant to the orders passed by this Court, the present impugned order has been passed. The learned counsel would further submit that in any event, the impugned order may be directed to be treated as show cause notice 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 petitioner is the public premises, which is under the control of the respondent Municipality. The respondent Municipality require the building for allotment of the same to their employees, as the petitioner is not their employee. Therefore, the present impugned order has been passed. 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 petitioner, 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 petitioner and similarly placed persons, it is appropriate to treat the impugned order as notice 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 petitioner as well as the respondent Municipality to treat the impugned order issued to the petitioner as notice issued under Section 4 of the Act and the petitioner is directed to give a reply within 10 days from today. On such reply being received by the respondent from the petitioner, 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 petitioner's possession shall not be disturbed.

The writ petition is disposed of accordingly. No costs.
Connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

The Commissioner
Udhagamandalam Municipality
Udhagamandalam
The Nilgiris

W.P.No.39080 of 2016

KSJ (CO)
kk 30/11



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