

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2142 of 2011
and
M.P.No.1 of 2011**

1.Ramachandiran
2.Mangai
3.Janakiraman
4.Balaraman
5.Murugaiyan

.. Petitioners

Vs.

The Estate Officer-cum-Deputy Collector
(Revenue) South,
Villianur, Puducherry, Revenue Complex,
Villianur, Puducherry – 605 110.

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Judgment and decretal order of the Court of the IIIrd Additional District Judge, Puducherry in M.A.No.2 of 2010, dated 10.01.2011.

For Petitioners : Mr.V.Raghavachari

For Respondent : Mr.B.Nambiselvan
Additional Government Pleader (Pondy)

ORDER

The petitioners have filed this Civil Revision Petition to set aside order dated 10.01.2011 made in M.A.No.2 of 2010 on the file of the IIIrd Additional District Judge, Pudhucherry.

2.The case of the revision petitioners is that a portion of land in R.S.No.47/1 of Kurumbapet Revenue Village measuring to an extent of 0.09.00 Hec., is under their occupation. The said property earlier stood as a dry and barren land used as a public latrine by the villagers therein. Being so, the father of the revision petitioners namely Nathan by planting trees developed the property and the same was under his possession till his life time. In the meantime, some of the public claiming to be the Panchayathars tried to grab the above portion of property, for which the revision petitioners father Nathan filed a suit in O.S.No.912 of 1999 and obtained a decree of injunction. On the failure in their attempts, the above Panchayathars approached the respondent herein praying to evict the revision petitioners' father claiming that the portion of property is required for the occupation of a local temple

namely Sri Iyyanarappan Koil.

3. In pursuance of the same, regardless of the long possession of the petitioners' father, form AA notice was issued by the respondent. Against which the said Nathan preferred an appeal before the Learned District Judge, Pudhucheery in M.A.No.10 of 2000 and the appeal was disposed on 04.11.2003 by holding that the respondent may consider providing a suitable alternative site to the revision petitioners' father.

4. While so, on 13.07.2010 the respondent without conducting any enquiry has issued an order in Form AA under Sub-Section (i) Section 5(b) of the Public Premises (Eviction of Unauthorized Occupants) Act calling upon the revision petitioners to remove the encroachment within 7 days, failing which the encroachment shall be removed by the respondent. The said order does not have any legal sanctity, since there was neither enquiry nor personal hearing nor compliance to mandatory procedure of issuing notice under section 4 of Eviction of Unauthorized Occupants Act was made. Therefore the said order was challenged before the Learned Additional District Judge, Pudhucherry in M.A.No.2 of 2010. However, the Learned Appellate Judge on misconception of law and fact has erroneously dismissed the

revision petitioners appeal vide the impugned order herein dated 10.01.2011. Aggrieved over the same the revision petitioners have come up with the present Civil Revision Petition.

5.A counter affidavit dated 03.03.2017 was filed by the respondent denying the averments set out in the Civil Revision Petition.

6.The respondent states that the entire fundamental provisions of the Public Premises (Eviction of Unauthorised Occupants) Act was scrupulously followed in the petitioner's case.

7.The respondent further states that the order in No.1591/SCRS/B3/2010 dated 13.07.2010 was passed only after issuing a preliminary notice to the petitioner directing him to show cause within fifteen days as to why he should not be evicted from the public premises and also after considering the explanation submitted by the petitioners. But the case of the petitioner is that without giving any opportunity, the enquiry was conducted by the respondent. Apart from this, the respondent also states that the petitioner have not raised the issue during the personal hearing of the then Estate officer-cum-Sub

Collector (Revenue) South or in the written reply filed by the occupants in response to the notice issued in Form "AA" under Sub Section (2) of Section 5-A of the said Act.

8.The respondent also further states that the possession of the land in R.S.No.47/1 of Kurumbapet Revenue Village measuring to an extent of 0.09.00 HAC which was under the unauthorised encroachment by the petitioners, have been evicted and taken possession by the Tahsildar, Villiyanur Taluk Office, on 14.06.2013 at 10.30 a.m. itself and now the land is free from encroachment. But the other allegations set out by the petitioners that several other persons have occupied public premises on the side of the petitioner's occupation and they were not evicted is false, since there was no such encroachment has been brought to the notice of the respondent so far. Only with a view to justify the petitioners own wrong doing and to prejudice the mind of the Court, the petitioners have made such a false claim, if there was any other encroachment as alleged by the petitioners, it would also be evicted.

9.The land was utilised by the people of Kalmedupet and surrounding areas for celebrating the festival of Sri Arulmigu Sri

Muthumariamman Temple of Kalmedupet and for cooking pongal during the festival celebrated every year and on special occasion for them. Therefore, the land was utilised for the public purpose in the surrounding areas, since the temple trustees also requested the Estate Officer to maintain the land without any encroachment for public utility during the festival seasons. The 1st petitioner Mr.Ramachandiran S/o Nanthan, who is working as a Mazdoor and other petitioners Tmt.Mangai W/o Nanthan, Mr.Janagiraman S/o Nanthan were also working in Perunthalaivar Kamarajar Krishi Vigyan Kendra, Kurumbapet and they are having lands at Kurumbapet and adjacent areas.

10.The respondent also states that the Appellate Court namely the District Court directed the respondent to identify a place to the petitioners before taking coercive recourse to law is false and hereby denied. Since the Court only made a suggestion to the Government that the petitioners may be considered for granting an alternate site, if he is otherwise eligible, the order of the Court was neither mandatory nor a precondition for eviction and it made only a suggestion to accommodate the petitioners. Apart from this, the petitioners never applied to the Competent Authority for grant of alternate site by

detailing eligibility for getting a free site from the Government.

11.The respondent also states that the Hon'ble Supreme Court in its order vide S.L.P.No.8519 of 2006 has given direction to all the States and Union Territories that encroachments made on the Government lands, irrespective of its length of period/purpose shall be evicted and maintained free from encroachments. Therefore, the respondent prayed this Court for dismissal of the Civil Revision Petition.

12.On 10.03.2017, the respondent also filed additional counter affidavit narrating the earlier stand taken in the original counter affidavit. In the counter affidavit, the respondent states that the enquiry was conducted through the Tahsildar, Taluk Office, Villianur which revealed that the said Thiru.Nandhan was not eligible for providing free alternative site as he was having house sites at Kurumampet Revenue Village R.S.No.40/13 to an extent of 0.01.00 HAC in R.S.No.40/18 to an extent of 0.01.50 HAC and in R.S.No.43/2 to an extent of 0.10.00 HAC in his father's name Thiru.Perumal S/o Seenan. Apart from this, Thiru.Nandhan was having agricultural land to an extent of 6 Kani (03.10.00 HAC) at Pullichappallam, Vanur Taluk,

Tamilnadu.

13.The respondent also states that the Hon'ble Supreme Court of India in Civil Appeal No.1132 of 2011 @ SLP(C)No.3109 of 2011 was clearly held that no encroachment should be allowed in the public land which is meant for public utility and it should be evicted irrespective of the duration of occupation. Apart from this, this Court also in WP.No.38238 of 2016 upheld the order of the eviction by the Collector in a similar encroachment made in Government Poramboke land of Sanniyasikuppam Revenue Village, where the petitioners were evicted from the public land and the premises was locked by the Collector without taking recourse to the procedures laid down in the Public Premises (Eviction of unauthorised Occupants) Act.

14.The respondent also states that the order of eviction made inadvertently, without being aware of the existence of the order of status quo passed by this Court. Hence, the respondent have no intention to disobey the order of this Court, since he sincerely apologize for this inadvertent and unintentional act which was caused a huge embarrassment to this Court. Therefore, the respondent prayed for dismissal of the Civil Revision Petition.

15.I heard Mr.V.Raghavachari, learned counsel appearing for the revision petitioners and Mr.B.Nambiselvan, learned Additional Government Pleader (Pondicherry) appearing for the respondent and perused the entire records.

16.When the Civil Revision Petition was taken up for admission, this Court by order dated 27.06.2011 ordered, "Notice of motion returnable in two weeks. Status quo shall be maintained till then", later on the order was periodically extended.

17.When the matter has been taken up for final hearing on 03.03.2017, the learned counsel appearing for the petitioner states that even after the order and status quo passed by this Court, the petitioners were purposely evicted from the premises. Therefore, this Court by order dated 03.03.2017 directed the respondent The Estate Officer-cum-Deputy Collector (Revenue) South, Villianur, Pudhucherry, to appear before this Court on 10.03.2017, accordingly, the Deputy Collector also appeared before this Court by stating that without noticing the status quo order passed by this Court and without being aware of the existence order of this Court, the order of eviction is

inadvertent and to that effect he has also filed additional counter affidavit dated 10.03.2017.

18. When the order of status quo was granted by this Court dated 27.06.2011, the respondent has issued the order dated 30.05.2013 directed the Tahsildar, Villiyanur Taluk office, to evict the petitioners from the possession and report on or before 14.06.2013. Accordingly, the Tahsildar, Villiyanur by his letter dated 09.07.2013 stated that as per the direction of the learned IIIrd Additional District Judge, Pudhucherry vide M.A.No.2 of 2010, dated 10.01.2013, and the memorandum vide No.1499/DCRS/B2/2012-13 dated 30.05.2013, issued by the Deputy Collector (Revenue) South, Villianur, the petitioners were evicted from the premises and possession also taken by the Tahsildar on 14.06.2013 at 10.30 a.m. That would show that the respondent without noting the order passed by this Court as evicted the petitioner.

19. It is the case of the petitioner is that unless the respondent issued notice under Section 4 of the Act setting out the grounds of eviction, they have no right to issue the eviction proceedings.

20.It is also made clear that though the respondent has filed counter stating that before passing the order on 13.07.2010 there was an enquiry conducted by the respondent and thereafter only the proceeding in No.1591/SCRS/B3/2010 dated 13.07.2010 under Section 5-A(2) of the Public Premises (Eviction of Unauthorised Occupants) Act in Form No.AA has been issued.

21.Section 5-A(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, reads as follows:

"5-A(2) - Power to remove unauthorized constructions, etc.— Where any building or other immovable structure or fixture has been erected, placed or raised on any public premises in contravention of the provisions of sub-section(1), the estate officer may serve upon the person erecting such building or other structure or fixture, a notice requiring him either to remove, or to show cause why he shall not remove such building or other structure or fixture from the public premises within such period, not being less than seven days, as he may specify in the notice; and on the omission or refusal of such person either to show cause, or to remove such building or other structure or fixture from the public premises, or where the cause shown is not, in the opinion of the estate officer, sufficient, the estate officer may, by order, remove or cause to be removed the building or other structure or fixture from the public premises and recover the cost of such removal from the person aforesaid as an arrear of land revenue."

22.As per the above provision, it made clear that the estate officer namely the respondent has remove the construction or

superstructure from the unauthorised occupants, but the case in hand, it is made clear that the petitioner have not constructed any superstructure or building in the schedule mentioned property, but they are using the schedule mentioned property for the purpose of cultivation. Apart from this, the schedule mentioned property is only 20 Kuzhies. Therefore, the very issuance of notice under Section 5A(2) of the said Act is not proper, since Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, empowers the respondent for evicting the petitioner from the schedule mentioned property. Section 4 of the Public Premises (Eviction of Unauthorised Occupants), Act, 1971, reads as follows:

"4. Issue of notice to show cause against order of eviction.—(1) If the estate officer is of 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, in occupation of, or claim interest in, the public premises, -

(i) 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 seven days from the date of issue thereof, and

(ii) to appear before the estate officer on the date specified in the notice alongwith the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.]

(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."

23. On fair reading of the above provision, Section 4 and 5-A(2) of the Public Premises (Eviction of Unauthorised Occupants), Act, 1971, made clear that the respondent should have invoked only Section 4 of the Act. The respondent should invoking Section 4 of the said Act to proceed for the eviction of the petitioner, but without doing so they issued Section 5-A(2) of the Act and ordered to evict.

24. In fact, the petitioner himself has filed objection under Section 5-A(2) of the Act that he raised coconut trees, teakwood trees, Portia trees and other trees and in a portion of that property, constructed a thatched house and living there with his family. As per

judgment, the petitioners have constructed a thatched house in the schedule mentioned property, the learned Principal District Judge, Pudhucherry, has passed the order for evicting the petitioners premises for the eviction of the petitioners. Therefore, the very issuance of Form "AA" is well considered notice and therefore, dismissed the said appeal by the learned Judge. The very issuance of Form " AA" by the Estate Officer under the Public Premises (Eviction of Unauthorised Occupants), Act, 1971, reads as follows:

"Now, therefore, in pursuance of sub-section (2) of Section 5-A of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, I call upon you to remove the said trees and plants cultivated on the public premises mentioned in the schedule below on or before the 25 October 2009 or to show cause why this should not be removed on or before the above mentioned date. In the event of your refusal or failure to comply with this notice within the period specified above, the said trees and plants shall be removed by the Estate Officer or the Officer authorized by him and the cost of such removal shall be recovered from you as arrears of land."

25. In the notice in Form "AA" issued under Section 5-A(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 dated 09.10.2009, the respondent himself has mentioned that he called upon the petitioners to remove the said trees and plants cultivated on the public premises mentioned in the schedule below on or before 25.10.2009. Thus being the case, Section 5-A(2) has not at all attract

since the Section 5-A(2) itself has clearly says that power to remove unauthorised constructions etc., and it is stated that where any building or other immovable structure of fixture has been erected, placed or raised or any public premises in contravention of the provisions of sub-section(1), the estate officer may serve upon the person erecting such building or other structure or fixture from the public premises and recover the cost of such removal from the person aforesaid as an arrear of land revenue. Therefore, the very issuance of notice under Section 5-A(2) of the said Act is improper. The respondent might have only invoke Section 4 of the Act, which clearly mandate that if the estate officer is of opinion that any persons are in unauthorised occupation of any public premisses and they should be evicted. Therefore, the very issuance of notice under Form "AA" of the said Act dated 09.10.2009, the order in appeal filed by the petitioners in M.A.No.2 of 2010, dated 10.01.2011, passed by the IIIrd Additional District Judge, Pudhucherry, is totally wrong.

26. Therefore, this Court warranting interference in the orders passed by the respondent is liable to be quashed and accordingly the judgment and decree in M.A.No.2 of 2010, dated 10.01.2011 passed by the learned IIIrd Additional District Judge, Pudhucherry, confirming

the notice issued under Section 5-A(2) of the said Act, dated 09.10.2009, is liable to be quashed.

27. In the result, this Civil Revision Petition is allowed by setting aside the order passed in M.A.No.2 of 2010, dated 10.01.2011, on the file of the learned IIIrd Additional District Judge, Puducherry, confirming the notice issued Form AA under Section 5-A(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, dated 09.10.2009. Consequently, connected miscellaneous petition is closed. No costs.

06.10.2017

Speaking Order

Index:Yes

vs

To

The IIIrd Additional District Judge,
Puducherry.

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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.2142 of 2011
and
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