

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2017

CORAM

The HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.1044 to 1046 of 2010
and M.P.Nos.1 to 1 of 2010

A.Jagadeswari ...Petitioner in all the petitions

vs.

1. The Commissioner,
Land & Estate Department,
Corporation of Chennai,
Rippon Building,
Chennai.
2. The District Revenue Officer,
Land & Estate Department,
Corporation of Chennai,
Chennai. ... Respondents in all the petitions

PRAYER in W.P.No.1044 of 2010 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus directing the respondents to call for the records of the first respondent in its impugned proceedings dated 10.12.2009 received by the petitioner on 12.01.2010 bearing reference No.LE4/5011 (c)/2000 and quash the same and consequently, forbear the respondents from disturbing, interfering or evicting the petitioner's from its peaceful possession of the premises measuring to an extent of 684 square feet situated at S.No.1766/1 (part) in beneath the staircase of the Railway Overbridge at T.H. Road, Chennai - 21 by invoking the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised_ Act, 1975.

PRAYER in W.P.No.1045 of 2010 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus directing the respondents to call for the records of the first respondent in its impugned proceedings dated 11.12.2009 received by the petitioner on 12.01.2010 bearing reference No.LE4/5011 (A)/2000 and quash the same and consequently, forbear the respondents from disturbing, interfering or evicting the petitioner's from its peaceful possession of the premises measuring to an extent of 243 square feet situated at S.No.1766/1 (part) in beneath the staircase of the Railway Overbridge at T.H. Road, Chennai - 21 by invoking the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Act, 1975.

PRAYER in W.P.No.1046 of 2010 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus directing the respondents to call for the records of the first respondent in its impugned proceedings dated 16.12.2009 and 17.12.2009 received by the petitioner on 12.01.2010 bearing reference No.LE4/5011 (B)/2000 and bearing No.LE4/5098/2000 and quash the same and consequently, forbear the respondents from disturbing, interfering or evicting the petitioner's from its peaceful possession of the premises measuring to an extent of 1092 square feet situated at S.No.1766/1 (part) in behind the staircase of the Railway Overbridge at T.H. Road, Chennai - 21 by invoking the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised_ Act, 1975.

For Petitioner : Mr.A.Umashankar

For Respondents : No Appearance
(Name printed in the cause list)

COMMON ORDER

These writ petitions have been filed seeking to quash the impugned orders passed by the first respondent dated 10.12.2009, 11.12.2009, 16.12.2009 and 17.12.2009 respectively and consequently, forbear the respondents from disturbing, interfering or evicting the petitioner from her peaceful possession of the premises measuring to an extent of 684 square feet, 243 square feet and 1092 square feet respectively situated in S.No.1766/1 (part) in beneath the staircase of the Railway Overbridge at T.H.Road, Chennai-21.

2. I propose to dispose of all the three writ petitions by this common order.

3. Writ petitioner is one and the same in all the three writ petitions. Mr.A.Umashankar, learned counsel is present on behalf of the petitioner in all the three writ petitions.

4. It is seen that there are two respondents in all the three writ petitions. Both are the Corporation of Chennai officials. While respondent No.1 is the Commissioner of Corporation, respondent No.2 is the District Revenue Officer, Land & Estate Department of Corporation of Chennai.

5. It is seen from the records that both the respondents have been duly served on 05.02.2010. It is also seen from the interim order dated 21.01.2010 that the then learned Standing Counsel for the Corporation of Chennai (now elevated to the Bench of this Court) has appeared on behalf of the respondents.

6. As far as today's hearing is concerned, the name of the first respondent has been duly printed in the cause list. As the first respondent is the head/senior most official of the Corporation of Chennai, I am of the view that this printing in the cause list would suffice.

7. More over, after having perused the affidavit filed in support of the writ petitions and the typed set of papers, I am also of the considered view that this printing of the names of the respondents in the cause list as referred to supra would suffice for today's hearing. This is more so, in the light of the order, I propose to pass.

8. The subject matter of all the three writ petitions has a common thread.

9. The petitioner (A.Jagadeswari) in all the three writ petitions is one and the same as stated supra.

10. It is the case of the petitioner that she is a land lessee under Corporation of Chennai (hereafter referred to as "said Corporation" for the sake of brevity and clarity). With respect to the three separate parcels of the land, all at Door No.415, Thiruvotriyur High Road (referred to as T.H. Road), Chennai-21. The details of the extent of land, survey numbers in which they are comprised as set out in the three writ petitions are as follows:-

S.No.	Extent
S.No.1766/1 (part)	684 square feet
S.No.1766/1 (part)	243 square feet
S.No.1766/1 (part)	1092 square feet

11. It is the case of the petitioner that she was inducted as land lessee way back in 1969 by the Corporation of Chennai for a period of one year. It is also the further case of the petitioner that thereafter in 1972, in and by the proceedings dated 28.04.1972 (RDC No.G.3/48937/90), said Corporation granted land lease of the above said demised land for a period of 33 years. It is also the further case of the petitioner that she has been paying the land rent regularly to the Corporation of Chennai. It is the say of the petitioner that she has put up the superstructure therein and is carrying on business.

12. However, it is seen from the records as also from the submissions made by the learned counsel for the petitioner that notices with regard to all the three demised parcels of land were issued to the petitioner under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 (Tamil Nadu Act 1 of 1976) (hereinafter after referred to as "Public Premises Act" for the sake of brevity and clarity).

13. It is also seen from the records that the petitioner has filed one civil suit before the City Civil Court, Chennai assailing such notices issued under the Public Premises Act. The civil suit number is O.S.No.3042 of 2002 on the file of VIII Assistant Judge, City Civil Court, Chennai. It is seen that an exparte decree has been obtained by the petitioner from the VIII Assistant Judge, City Civil Court, Chennai and that exparte decree is dated 28.02.2003. It is seen from the decree that the then Standing Counsel for the Corporation of Chennai has not appeared before the Court.

14. The Public Premises Act is a self-contained code with adequate and ample provision for appeal. In other words, it is a self-contained code qua appeal mechanism. Therefore, a suit of this nature was clearly impermissible. Fortunately that suit was only with regard to the notices issued earlier at that point of time being notices dated 08.02.2002 bearing reference Nos.(i) LE.4/5011(A)/2K; (ii) LE.4/5011(C)/2K; (iii) LE.4/5011(B)/2K and (iv) LE.4/4102A respectively.

15. Now afresh, four impugned notices have been issued to the petitioner with regard to three parcels of the demised land. The impugned notices have also been issued under Public Premises

Act and the details of the four notices and the corresponding writ petition numbers are as follows:-

(a) LE.4/5011(C)/2000, dated 10.12.2009	(W.P.No.1044 of 2009)
(b) LE.4/5011(A)/2000, dated 11.12.2009	(W.P.No.1045 of 2009)
(c) LE.4/5011(B)/2000, dated 16.12.2009	(W.P.No.1046 of 2009)
(d) LE.4/5098/2000, dated 17.12.2009	

16. Assailing the above said impugned notices, the petitioner had filed three writ petitions (W.P.Nos.1044, 1045 & 1046 of 2010). At the time of admission, while admitting and issuing Rule Nisi, this Court had granted conditional interim order on 21.01.2010 to the effect that there shall be an order of interim injunction, subject to the condition that the petitioner deposits 50% of the amount cited in the impugned notices within a period of four weeks from the date of the interim order.

17. The petitioner has produced photo copies of the letters under cover of which the conditional interim order has been complied with on 02.02.2010 within the time frame given by this Court.

18. Therefore, the interim order granted by this Court dated 21.01.2010 at the time of admission of the writ petitions is operating. This has been noticed by me.

19. The primary and pivotal submission of the learned counsel appearing for the petitioner is that the petitioner is a land lessee under the said Corporation and is therefore governed by the Transfer of Property Act, 1882. In other words, the learned counsel for the petitioner would contend that the proceedings under the Public Premises Act cannot be initiated against a land lessee. The learned counsel for the petitioner would further contend that the Public Premises Act would be attracted only when there is a superstructure and not for the land alone, his contention is that the superstructure belongs to the petitioner, as she is only a land lessee. In other words, he would contend that the Public Premises Act would be attracted only if the superstructure also belongs to or is vested in a public authority.

20. A perusal of the relevant provisions of the Public Premises Act would reveal that the above said submission of the learned counsel for the petitioner is incorrect. The reason is, definition of "public premises" in Section 2 (e) reads as follows:-

"2(e) "public premises" means any premises belonging to or taken on lease or requisitioned by, or on behalf of the Government, and includes -
(1) any premises belonging to, or taken on lease, by, or on behalf of -

(i) any Company as defined in Section 3 of the Companies Act, 1956 (Central Act 1 of 1956) in which not less than fifty-one per cent of the paid-up share capital is held by the Government; and

(ii) any Corporation (not being a company as defined in Section 3 of the Companies Act, 1956 (Central Act 1 of 1956) or a local authority) established by or under any law and owned or controlled by the Government; and

(2) any premises belonging to or vested in, a local authority or any Board constituted under any law."

Definition of "premises" in Section 2(d) reads as follows:-

"2(d) "premises" means any land or any building or hut or part of a building or hut and includes, -

(i) gardens, grounds and outhouses, if any appertaining to such building or hut or part of a building or hut; and

(ii) any fittings affixed to such building or hut or part of a building or hut for the more beneficial enjoyment thereof."

21. A combined reading of the above said definitions would reveal that Public Premises Act would apply even if it is a land. It is also clear that it would apply even to cases where the land has been taken on lease by the Municipal or other authorities. In the instant case, I am unable to persuade myself to accept the position that the petitioner would be a lessee holding over or lessee at sufferance. The reason is even a land which is taken on lease by the Government would be public

premises. The three parcels of the demised land which vest in the said Corporation would certainly be public premises.

22. Therefore, it may not be necessary to go into the question as to whether the demised parcels of the land actually belong to the said Corporation and the manner in which it vests in the said Corporation.

23. In the light of the clear definition of 'public premises' in Section 2(e) of the Public Premises Act extracted supra, wherein and whereby any premises belonging to or vested in a local authority or any Board constituted under any law shall be public premises, this exercise is not required.

24. Now when it is clear that the said three parcels of the demised land vest in the said Corporation, the learned counsel for the petitioner takes me to the next question of interplay of Transfer of Property Act and the Public Premises Act.

25. Transfer of Property Act, 1882 is a general law. Public Premises Act, 1975 is a special statute. This makes the issue simple to resolve. A special statute always over rides any provision in general law. This is the reason why, I am unable to persuade myself to accept that the petitioner is a lessee holding over or lessee at sufferance governed by the Transfer of Property Act, 1882 or Section 106 of the Transfer of Property Act particularly.

26. That leaves me with the question of further remedy, if any, qua impugned orders that is available to the petitioner.

27. It is not in dispute that show cause notices as required under the Public Premises Act were issued to the petitioner before the impugned orders came to be passed. Therefore, the impugned orders have been issued under Section 5 of the Public Premises Act. Against such orders, an appeal remedy is available to the petitioner and the appeal remedy is under Section 9 of the Public Premises Act, which reads as follows:-

"9. Appeals. - (1) An appeal shall lie from every order of the Estate Officer made in respect of any public premises under Section 5 or 7 to an Appellate Officer who shall be the District Judge of the district in which the public premises are situated or such other Judicial Officer in that district of not less than such number of years standing as may be prescribed and as the District Judge may designate in this behalf.

(2) An appeal under sub-section (1) shall be preferred within such period as may be prescribed:

Provided that the Appellate Officer may entertain the appeal after the expiry of the prescribed period, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) Where as appeal is preferred from an order of the Estate Officer, the Appellate Officer may stay the enforcement of that order for such period and on such conditions as he deems fit.

(4) Every appeal under this section shall be disposed of by the Appellate Officer as expeditiously as possible.

(5) The costs of any appeal under this section shall be in the discretion of the Appellate Officer.

(6) For the purposes of this section, a Presidency-town shall be deemed to be a district and the Chief Judge or the Principal Judge of the City Civil Court therein shall be deemed to be the District Judge of the district."

28. Owing to all that have been stated supra, I am of the view that no relief can be granted to the petitioner in the instant writ petitions.

29. At this juncture, the learned counsel appearing for the petitioner would plead that he may be given leave to pursue the appeal remedy available to the petitioner under Section 9 of the Public Premises Act.

30. A perusal of the Public Premises Act and the Rules made thereunder viz., the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Rules, 1978 (hereinafter referred to as "said Rules" for the sake of brevity and clarity) particularly Rule 7 of the said Rules makes it clear that an appeal under Section 9 of the Public Premises Act to the Appellate Officer (District Judge of the District in which the public premises are situated or such other Judicial Officer in that district) has to be preferred within thirty days from the date of receipt of the copy of the order.

31. In the instant case, the learned counsel for the petitioner submits that four impugned orders dated 10.12.2009; 11.12.2009; 16.12.2009 and 17.12.2009 respectively were all received by the petitioner only on 12.01.2010. This Court also finds from the respective impugned orders an endorsement which reads "received on 12.01.2010".

32. It is also seen from the records that these writ petitions have been filed on 20.01.2010 i.e., within a week therefrom. Therefore, the petitioner contends that if the time spent by the petitioner in this Court is excluded, the petitioner would still have three weeks time to approach the Appellate Authority.

33. Considering the fact that the petitioner was originally inducted as a lessee that too way back in 1969 more than 45 years ago, it would be in tune with equity and fair play to grant leave to the petitioner to exhaust her appeal remedy available under Section 9 of the Public Premises Act.

34. Therefore, leave is granted to the petitioner to assail the impugned orders under Section 9 of the Public Premises Act before the Appellate Authority.

35. If the petitioner choses to file such appeals and if she does so she shall do so by taking out applications (along with the appeals) under Section 14 of the Limitation Act seeking exclusion of the time spent in this Court and it is for the Appellate Authority to examine the same on merits and entertain the appeals. If the Appellate Authority finds that the same is within the prescribed time (prescribed under Rule 7 of the said Rules) after exclusion under Section 14 of the Limitation Act, it is for the Appellate Authority to decide the appeals.

36. If the petitioner choses to file an appeal as aforesaid pursuant to the leave granted, though obvious, it is made clear that the Appellate Authority shall hear the appeals on merits and in accordance with law without being swayed or influenced by this order. The appeals, if any, filed pursuant to the leave granted by this Court and entertained, shall be disposed of within a period of six months from the date of the presentation of the appeals. It is also made clear that the time for filing appeals will start running from the date of receipt of a copy of this order.

37. The writ petitions, accordingly, stand disposed of. No costs. Consequently, M.P.Nos.1 to 1 of 2010 are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To:

1. The Commissioner,
Land & Estate Department,
Corporation of Chennai,
Rippon Building,
Chennai.
2. The District Revenue Officer,
Land & Estate Department,
Corporation of Chennai,
Chennai.

+1cc to M/s.C.Seethapathy, Advocate, S.R.No.47360

W.P.Nos.1044 to 1046 of 2010

AR(CS V)
CU(14/07/2017)

सत्यमेव जयते

WEB COPY