

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.04.2017
Delivered on : 28.04.2017

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

CRP (NPD) No.1258 of 2013 and
M.P.No.1 of 2013

The Estate Officer-cum-Commissioner,
Vellore Municipal Corporation,
Vellore.

...Petitioner

versus

Thendral Manamahizh Mandram
Rep. by its Secretary,
R.Perumalswamy
Indoor Stadium, Phase I,
Sathuvachari, Vellore - 632 009.

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 27.02.2013 made in PPE C.M.A.No.2 of 2012 passed by the Principal District Judge, Vellore against the order made in Roc.No.111/12/F1 dated 26.07.2012 passed by the Estate Officer, Vellore Municipal Corporation, Vellore.

For Petitioner : Mr.Silambanan
Senior Counsel for
Ms.P.Shanthi

For Respondent : Mr.V.P.Sengottuvel

ORDER

This Civil Revision Petition is directed against the order dated 27 February, 2013 on the file of the Principal District Judge, Vellore allowing the appeal filed by the respondent by setting aside the order passed by the Estate Officer under Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975.

Summary of Facts:

2. The Tamil Nadu Housing Board formed a lay out in Vellore. The Housing Board reserved 14,000 Sq.ft of land to be used as Children play area. The land was given to Sathuvachari Town Panchayat. The Town Panchayat, in turn, handed over the land to Thendral Manamahizh Mandram floated by a local Member of Legislative Assembly (MLA). The MLA appears to have sanctioned funds from his Constituency Development Fund to develop the land as an indoor stadium. The Town Panchayat was subsequently merged with Vellore Municipality. Since there was no valid lease, the Municipality initiated action for eviction. The Estate Officer, after giving notice to the respondent passed an order of eviction. The said order was challenged before the Principal District Judge, under Section 9(2)(a) of the Tamil

Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975.

3. The learned Principal District Judge set aside the order passed by the Estate Officer primarily on the ground that non-renewal of the registration of the society cannot be a valid reason to cancel the license. The learned Judge was of the view that lease was given by the then Panchayat by way of a resolution and as such, the respondent cannot be termed as an unauthorised occupant.

Submissions:

4. The learned Senior Counsel for the petitioner contended that there was no valid lease in favour of the respondent. It was only on the strength of the resolution of the then Panchayat, the respondent took possession of the property. The respondent has been treating the property as a private property and collecting considerable amount from the members. The local people have not been given permission to use the indoor stadium. In short, it was the contention of the learned Senior Counsel that the respondent converted the public land into a private land. The learned Senior Counsel contended that the respondent is a trespasser and therefore, the Estate Officer was correct in initiating proceedings for eviction. The learned Senior Counsel further contended that the Trial Judge proceeded on wrong assumption that there was a valid lease and the same resulted in setting aside the well considered

order passed by the competent authority.

5. The learned counsel for the respondent justified the order passed by the learned Principal District Judge. According to the learned counsel, the respondent, after taking possession of the land developed it as an indoor stadium. Since possession of the premises was on the strength of a resolution, the Estate Officer was not correct in initiating proceedings against the respondent.

Analysis:

6. The property in question was allotted by the Tamil Nadu Housing Board for a public purpose. The Housing Board entrusted the property with the local body for the purpose of using it as a play area for children. According to the respondent, the Sathuvachari Town Panchayat, by proceedings dated 22 December, 2000 and 30 November, 2009 entrusted the property with the Mandram. The local MLA was the main office bearer of the Mandram. It is the case of the MLA that he contributed funds from the Constituency Development Fund to develop the stadium. The fact remains that it was only the public funds that he spent for developing the land. By spending the

amount from the Constituency Development Fund, the MLA cannot be heard to say that he is entitled to possess and maintain the public place for personal gain.

7. There is nothing on record to show that a valid lease for a particular period was given to the respondent. Similarly, there is nothing on record to show that license was given to the respondent indicating the period. The respondent placed reliance on certain resolutions passed by the Panchayat. The Panchayat has no right to give a lease or license of the property earmarked for a public purpose. The property allotted for using it as a Children play area should be used only for that purpose. There is no question of the Mandram developing the property and making profit.

8. The respondent resisted the proceedings initiated by the Estate Officer on the ground that pursuant to the license, they have been in possession and enjoyment of the land. Even if there is a license, it would not be possible to enjoy the property after the expiry of the period of license. In the subject case, there is nothing on record to show that license was granted for a particular period. Even if there is a license, the licensee would be treated as a trespasser after the expiry of

the period of license, in view of the provisions of the Act in question.

9. The property is admittedly a public property earmarked for a public purpose. The property, therefore, should be used for the benefit of the public at large. The MLA, who is the main office bearer of the respondent Mandram spent money only from the MLA Fund. It was not his private fund to make a claim to possess the property on the ground that he spent considerable amount to develop the land. The public funds was spent for developing a public property. The MLA is therefore not entitled to make a preferential or exclusive claim over the property earmarked for public purpose.

10. The documents exhibited on the side of the respondent is not sufficient to arrive at a finding that a perpetual lease or license was granted to enjoy the public property. The alleged resolution passed by the erstwhile Panchayat would not give a right to the respondent to keep the property in exclusive possession and earn profit by collecting subscription from the members and others, who are making use of the amenities.

11. The petitioner has already taken possession of the public

property.

12. The learned Principal District Judge, without any material accepted the case of the respondent and opined that they have been in peaceful possession and enjoyment of the property and as such, the Mandram cannot be treated as a trespasser. The available materials clearly show that the property in question is a public property and the respondent is in unauthorised occupation. Since this aspect was not considered by the learned Principal District Judge, the impugned order is liable to be set aside.

13. In the result, the order dated 27 February, 2013 is set aside. The appeal in PPE C.M.A.No.2 of 2012 is dismissed. In short, the order passed by the Estate Officer is restored.

14. In the up shot, I allow the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

28.04.2017

Index : Yes/No
Speaking/Non-speaking order

svki

K.K.SASIDHARAN.,J.

(svki)

To

1. The Principal District Judge,Vellore
2. The Estate Officer, Vellore Municipal Corporation, Vellore.

Order in
CRP (NPD) No.1258 of 2013

28.04.2017