

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.28911 of 2017
& WMP Nos. 31131 to 31133 of 2017

Yesiah

.. Petitioner

Vs.

The Commissioner-in-charge,
Udhagamandalam Municipality,
Udhagamandalam,
The Nilgiris District

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the entire records relating to impugned notice issued by the respondent in Na.Ka.No.1895/2017/A9, dated 09.10.2017 and quash the same.

For Petitioner : M/s.C.E.Pratap

For Respondent : Mr.P.Srinivas

ORDER

The petitioner has come forward with this writ petition to call for the entire records relating to the impugned notice issued by the respondent in Na.Ka.No.1895/2017/A9, dated 09.10.2017 and quash the same.

2. The case of the petitioner is that the Municipality quarters were allotted on rental basis to the petitioner's ancestors, who were employed by the British regime. The legal heirs of the employees continued to reside there and they were in peaceful occupation of the premises even after the death of the ancestors. The petitioner's paternal aunt originally residing in the said quarters and she being a spinster and old lady, the petitioner has stayed with her and helped her in day to day activities. It is stated that the petitioner is paying the monthly rent periodically without any default. On account of old age, petitioner's paternal aunt died on 09.01.2017 and after her demise, the petitioner along with his family residing in the

said quarters.

3. According to the petitioner, they were in continuous possession and occupation of the quarters and even as on date, the rent is paid without any default, but through a notice dated 09.10.2017, the petitioner has been asked to vacate the premises and hand over the possession to the respondent-Municipality. According to the petitioner, a detail reply was given in the form of objections dated 11.10.2017 stating that an action under Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 can be taken only by an Estate Officer and not by the respondent. It is stated that no final order was passed for more than 5 months and suddenly the impugned order dated 09.10.2017 has been passed to vacate the petitioner, without considering the objections and the action of the respondent is arbitrary, malafide and without following principles of natural justice.

4. Eventhough no counter affidavit has been filed by the learned counsel for the respondent, he has submitted that if the petitioner is aggrieved by the order, he is entitled to prefer an appeal before the appellate authority. The petitioner is residing in the quarters, which is meant for the staff and that the petitioner is not a staff, and hence he has no business to stay in the premises and continue therein is illegal.

5. Heard both sides and perused the materials available on record.

6. The fact that the petitioner's aunt was an employee of the Municipality and she died in January 2017 is not in dispute. Without preferring an appeal before the appellate authority, the petitioner has approached this Court. Even though the petitioner has not preferred appeal, this Court is not inclined to relegate this matter to the appellate authority at this stage, as it would only prolong the proceedings. Since the petitioner's aunt was an employee and she was residing in the quarters, petitioner might have resided in the quarters, but once the employee ceased to be an employee either on the ground of retirement or on the ground of death, within reasonable time, the dependent family members will have to vacate the premises / quarters. The enactment of the said 1975 Act has ensured that there are no illegal occupants.

7. In this case, admittedly, the petitioner is not an employee, the employee viz., petitioner's aunt, who was the employee of the Municipality, died in January 2017. The petitioner has no locus to continue in the quarters meant for employees and he is in illegal occupation, and he is only a trespasser. Hence, this Court is of the view that there is no substance in the contention of the petitioner. The petitioner

shall vacate the premises within a period of one month from the date of receipt of a copy of this order. If the petitioner fails to vacate the premises, the respondent is entitled to use police force to vacate him. After the 30th day, the petitioner is deemed to have vacated the premises and if any belongings are found in the premises, the respondent can remove the same and the petitioner cannot claim that his properties have been damaged.

8. With the above observation and direction, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

pvs

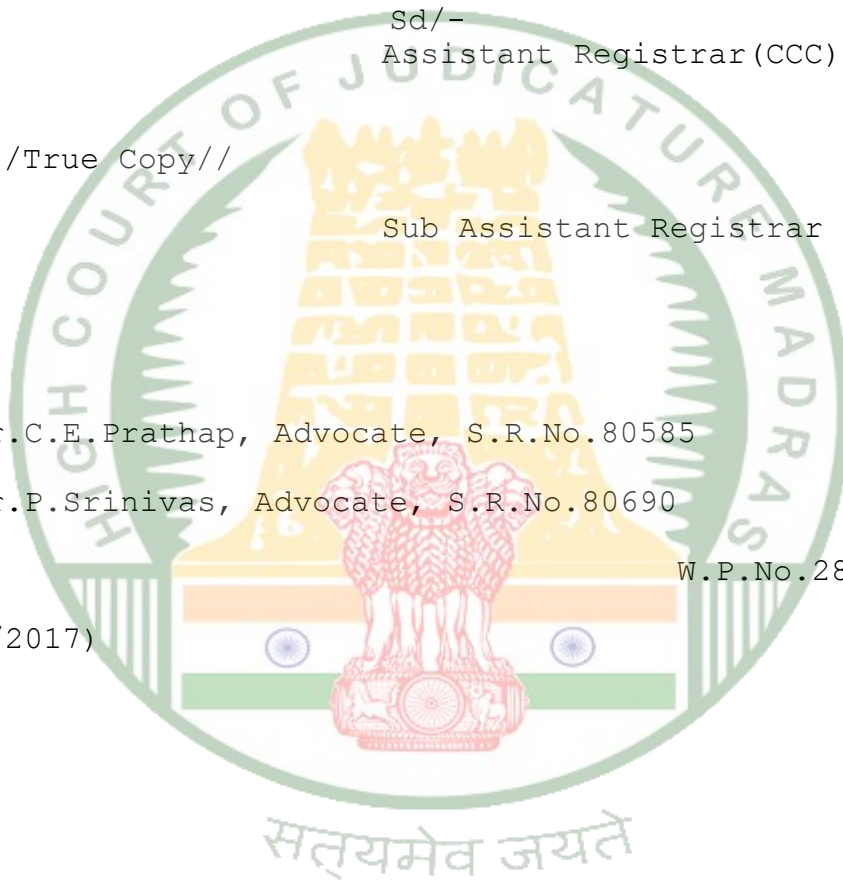
To

+1cc to Mr.C.E.Prathap, Advocate, S.R.No.80585

+1cc to Mr.P.Srinivas, Advocate, S.R.No.80690

W.P.No.28911 of 2017

RRK(13/12/2017)



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