

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2017

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.35178 of 2003

The Union of India Owning
Southern Railway
Rep. by its General Manager,
Park Town, Chennai -3.

...Petitioner

Vs.

1. The Principal District Judge,
Vellore District, Vellore.
2. Sri Vadivelu
3. The Estate Officer,
Divisional Railway Manager's Office,
Works Branch,
Southern Railway,
Trichy.

...Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the entire records of the first respondent under the (PPE) Civil Miscellaneous Appeal No.7 of 1999 including the order and decree dated 31.08.2001 and quash the same and direct the second respondent to vacate and hand over possession of the property encroached by the second respondent to the Railway Administration.

For Petitioner : Mr.P.T.Ramkumar
Standing Counsel (Railway)

For Respondents : No appearance

ORDER

The prayer sought for in this writ petition is for a Writ of Certiorarified Mandamus, to call for the entire records of the first respondent under the (PPE) Civil Miscellaneous Appeal No.7 of 1999 including the order and decree dated

31.08.2001 and quash the same and direct the second respondent to vacate and hand over possession of the property encroached by the second respondent to the Railway Administration.

2. It is the case of the petitioner that the second respondent had been in encroachment and occupation of railway land at Indira Nagar, No.722/2, Vasanthapuram, Vellore Town to the extent of 89.24 Sq.m with thatched roof house. Along with the petitioner totally 148 persons had been in occupation of the railway land. In view of evicting those occupants, a joint inspection was conducted on 04.05.1999 by the railway as well as the revenue department. Pursuant to which the following joint report was issued :-

"With reference to the above, it is stated that to-day we have jointly inspected over KM.150/6-9, conducted the Survey and ensure the Railway limits regarding the Indira Nagar, Ward No.5, Block No.16 and T.S.No.722/2 of Vellore Cantt.

And it is seen from the Survey that about 148 No's of encroachments are existing in the above said T.S.No.722/2 @ KM 150/6-9."

3. Before the said joint inspection, sufficient notice was made under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (herein after referred to as the Act) was issued by the petitioner on 12.12.1997 in Form A, whereby the second respondent had been directed to appear for the personal hearing fixed on 21.01.1998. Pursuant to the said notice issued under Section 4 of the Act, the representative of the second respondent attended the personal hearing on 21.01.1998 at 11.00 hours.

4. Thereafter, since the petitioner had been in illegal occupation of the railway property, which is the public property within the meaning of the Act, invoking the provision of Section 5 of the Act, the petitioner had issued eviction notice, whereby the second respondent was directed to vacate the said premises within 15 days failing which forcible action would be initiated. It seems that aggrieved over the issuance of the said notice dated 03.06.1999, the second respondent filed a Civil Miscellaneous Appeal in C.M.A.No.7 of 1999 under Section 9(1) of the Act before the first respondent-Appellate Authority (The Principal District Judge, Vellore District). The Appellate Authority after having heard the parties, by judgment dated 31.08.2001, has allowed the said appeal filed by the second respondent. As against the said order of the first respondent-appellate authority, the present writ petition has been filed.

5. Mr.P.T.Ramkumar, learned standing counsel appearing for the petitioner would submit that the issue raised in this writ petition has already been covered by the Judgment of the Division Bench of this Court by order dated 06.06.2007 made in W.P.No.36058 of 2003 etc., batch cases, in the matter of "The Union of India owning Southern Railway, Rep. by General Manager Vs. The Principal District Judge, Vellore and 2 others".

6. When the case is called today, no one is appeared for the respondent. Therefore, this Court is constrained to decide this case on merits based on the available records.

7. The learned counsel for the petitioner would rely upon the following paragraphs of the aforesaid Division Bench Judgment, which are extracted hereunder:-

"4.2. It is also brought to our notice that during the joint inspection by the revenue authorities of the State Government and the railway authorities on 04.05.1999, it was found that the impugned property belong to Railways.

4.3. When the State Government themselves conceded that the impugned land belongs to the Railways, there is no need to issue notice for the joint inspection to the encroachers, who have no say in the matter of deciding as to whom the public premises belong to. Therefore, non issuance of notice to the encroachers for joint inspection on 04.05.1999 would not, in any way, amount to violation of principles of natural justice nor would vitiate the eviction proceedings, because the scope and purpose of the joint inspection is only to decide whether the impugned premises is a poramboke land that belongs to the State Government or a public premises belonging to the railway authorities, but not to decide any rights conferred on the encroachers. It is, therefore, not open for the encroachers to contend that the Estate officer has no jurisdiction to initiate the impugned eviction proceedings under the provisions of the Act as though the property belongs to the State Government. We are, therefore, of the considered opinion that the learned appellate authority has got himself misdirected in holding that principles of natural justice were violated due to non issuance of notice to the encroachers for joint inspection held

on 04.05.1999 by the revenue authorities of the State Government and the railway authorities.

5.1. It is settled law that no person has right to encroach, by erecting any structure or otherwise, a place which is reserved or earmarked for public purpose and the public authorities are entitled to initiate action under the provisions of the Act to evict the unauthorised occupants.

5.2. The Act was enacted to provide a speedy machinery for eviction of unauthorised occupant of public premises by way of summary eviction. Section 5 of the Act provides for eviction of unauthorised occupation. Section 7 of the Act provides for recovery of rent and damages in respect of public premises from the persons who had unauthorisedly occupied the same, by appointing Estate Officers, who has been given power, after necessary enquiry to pass orders of eviction of such unauthorised occupants. The Estate Officer has also been given powers to remove and to order demolition of unauthorised constructions. Since the encroachment of public premises are considered as a public menace which are required to be discouraged in the larger public interest, as no one has got the right to occupy or encroach the public premises, the Estate Officer is empowered to exercise his power of enquiry by adopting a summary eviction proceedings giving notice within seven days to the respective occupants, which is mandatory, not merely directory in character, as the failure to make an effective reply to the notice may result in loss of occupation of the premises."

8. By relying upon the said judgment referred to above, the learned counsel for the petitioner would submit that, under Section 4 of the Act, notice was issued to the second respondent and on receipt of the same, he appeared for the personal hearing on the date fixed, through his representative and after giving due opportunity and following the procedure as contemplated under Section 4 of the Act, the petitioner, on satisfaction that the second respondent had been in occupation of the public premises belongs to the petitioner, had issued an order of eviction on 03.06.1999 under Section 5 of the Act.

9. Even in respect of the ground raised by the second respondent, who was the appellant before the first respondent-Appellate Authority, that at the time of making joint inspection a separate notice ought to have been given to the occupant, but before conducting inspection no such notice was issued, is concerned, the learned counsel for the petitioner would heavily rely upon the aforesaid Division Bench judgment. On perusal of the Division Bench judgment, it became clear that when the State Government participated in the joint inspection along with the petitioner and the declared that the land/property belongs to the petitioner railway, the question of giving further notice, at the time of joint inspection, does not arise. The very same joint inspection dated 04.05.1999 has been taken into account and the decision was rendered by the Division Bench in the Judgment referred to above. Hence this Court feels that the issue raised in this writ petition is no more res integra.

10. It is also brought to the notice of this Court that, following the Division Bench Judgment, in a recent order dated 21.07.2017 made in W.P.No.36057 of 2003, the learned Judge of this Court has passed the similar order by allowing the writ petition filed by the petitioner/railway. The said order is reproduced hereunder:-

"The petitioner has come forward with this writ petition challenging the order and decree made in Civil Miscellaneous Appeal No.13 of 1999 dated 31.08.2001 and for a direction to the second respondent to vacate and hand over possession of the property encroached by the second respondent to the Railway Administration.

2. Learned counsel for the petitioner submitted that the issue in question is covered by the order dated 06.06.2007 passed by this Court in W.P.No.36508 of 2003, etc. batch of writ petitions.

3. In view of the same, this writ petition is allowed and it is open to the petitioner to take over possession of the encroached area. No Costs."

11. In view of the aforesaid factual and legal position and the issue raised in the writ petition is covered by the said Judgment of this Court as referred to above, and since the second respondent is also similarly placed as one of the occupant in the particular land, which belongs to the

petitioner, the impugned judgment made by the first respondent-Appellate Authority is liable to be interfered with, accordingly the said judgment is set aside and the writ petition is allowed. No Costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

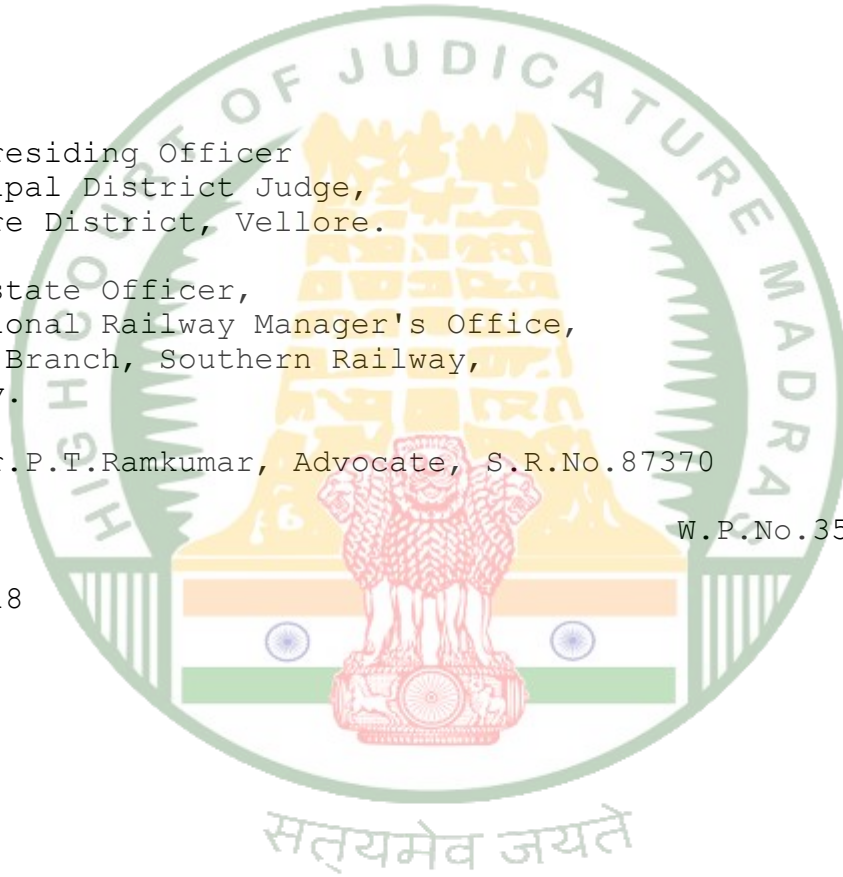
rts
To

1. The Presiding Officer
Principal District Judge,
Vellore District, Vellore.
2. The Estate Officer,
Divisional Railway Manager's Office,
Works Branch, Southern Railway,
Trichy.

+1cc to Mr.P.T.Ramkumar, Advocate, S.R.No.87370

W.P.No.35178 of 2003

CS/04/01/18



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