



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Sunday, the Seventeenth day of September Two Thousand Seventeen

WEB COPY

PRESENT

The Hon`ble Mr.Justice T.RAVINDRAN

CMP (MD) No.7372 of 2017

IN

CMP (MD) No.6658 of 2017

IN

CRP (MD) No.1353 of 2017

THE ESTATE OFFICER
V.O.C.CHIDAMBARANAR PORT TRUST,
TUTICORIN.

... PETITIONER/RESPONDENT/RESPONDENT
IN CMP (MD) No.7372 of 2017 AND
... RESPONDENT/ RESPONDENT
IN CMP (MD) No.6658 of 2017 AND
IN CRP (MD) No.1353 of 2017

Vs

S.SURESHKUMAR

... RESPONDENT/PETITIONER/APPELLANT
IN CMP (MD) No.7372 of 2017 AND
... PETITIONER/PETITIONER
IN CMP (MD) No.6658 of 2017 AND
... PETITIONER/APPELLANT
IN CRP (MD) No.1353 of 2017

Prayer in CMP(MD) . 7372/ 2017 in CRP(MD) . 1353/ 2017 :

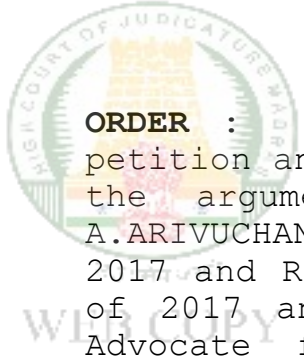
Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to vacate the interim stay order dated 02/08/2017 granted in CMP (MD) .No.6658/2017 in CRP (MD) .No.1353/2017.

Prayer in CMP(MD) . 6658/ 2017 in CRP(MD) . 1353/ 2017 :

To grant an Ad-Interim Stay of operation of the order of eviction made by the respondent in his proceedings in E(c) 100/3/2009/Est/D614 dated 14/03/2017 pending disposal of the above Civil Revision Petition.

Prayer in CRP(MD) . 1353/ 2017 :

To call for records relating to the fair and decreetal order made in CMA.NO.18 of 2017, dated 21/06/2017 made by the Principal District Court cum Appellate Authority, Thoothukudi and set aside the same as illegal.



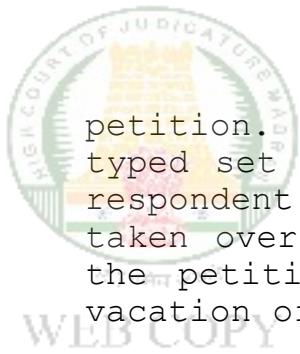
ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.VEERAKATHIRAVAN Senior Counsel for M/S. A.ARIVUCHANDRAN, Advocate for the petitioner in CMP(MD) No.7372 of 2017 and Respondent in CMP(MD) No.6658 of 2017 and CRP(MD) No.1353 of 2017 and of MR.AJMALKHAN Senior Counsel for AJMAL ASSOCIATES Advocate for the Respondent in CMP(MD) No.7372 of 2017 and petitioner in CMP(MD) No.6658 of 2017 and CRP(MD) No.1353 of 2017 the court made the following order:-

Date of Reserving the Order	Date of Pronouncing the Order
31.08.2017	12.09.2017

The civil revision petition is directed against the fair and decreetal orders, dated 21.06.2017, passed in C.M.A.No.18 of 2017, on the file of the Principal District Court-cum-Appellate Authority, Thoothukudi.

2. Briefly stated, it is found that the respondent had initiated proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, (hereinafter, referred to as "the Act") against the petitioner and in furtherance of the same, it is found that a show cause notice had been issued by the respondent to the petitioner, under Section 4(1) of the Act, calling upon him to show cause as to why an order of eviction should not be passed against him, within the time stipulated in the notice. It is found that following the same, the respondent had passed an order of eviction under Section 5(1) of the Act and accordingly, it is found that impugning the same, the petitioner had preferred a statutory appeal provided under the Act before the Appellate Authority in C.M.A.No.18 of 2017. The Appellate Authority, on a consideration of the rival contentions put forth by the respective parties and the materials placed, concurred with the eviction order passed by the respondent and accordingly, dismissed the appeal preferred by the petitioner. Impugning the same, the present civil revision petition has been preferred.

3. At the time of admission of the civil revision petition, it is found that the petitioner had not been granted any interim stay by this Court and inasmuch as the respondent had entered appearance through his counsel, it is found that the Court had directed the learned counsel for the respondent to file counter in the stay petition and accordingly, posted the matter from 19.07.2017 to 02.08.2017 for filing counter. On 02.08.2017, it is found that inasmuch as the learned counsel for the respondent sought time for filing counter, the Court had adjourned the matter to 30.08.2017, however, considering the facts and circumstances of the case, granted interim stay till then. It is found that meanwhile, the respondent has preferred an application in C.M.P.(MD) No.7372 of 2017 on 03.08.2017 to vacate the interim stay granted by this Court, on 02.08.2017, in C.M.P.(MD) No.6658 of 2017 in this civil revision



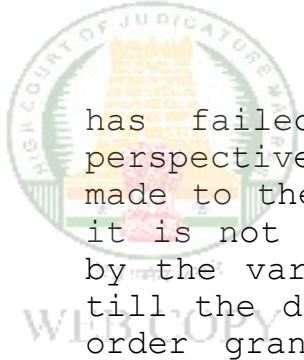
petition. It is seen that along with the vacate stay petition, a typed set of papers had also been filed and it is the case of the respondent that the possession of the property concerned had been taken over by the respondent by removing the encroachments made by the petitioner on 21.07.2017 itself and accordingly, prayed for vacation of the interim stay order.

4. Heard both sides.

5. Now, coming to the facts and circumstances of the case, for a thorough understanding of the matter involved in this civil revision petition and to determine whether the interim stay order granted in favour of the petitioner should be further continued or not, the following facts are essential.

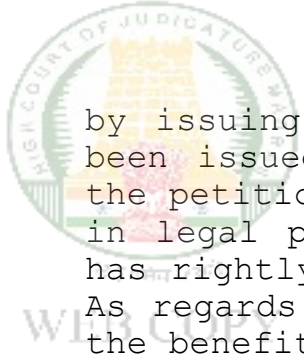
6. It is found that the respondent had issued a notice, dated 19.09.2016, under Section 4(1) of the Act, to the petitioner directing him to show cause as to why an order of eviction should not be passed against him, since he is in unauthorized occupation of the property concerned. It is found that on 06.10.2016, an order of eviction has come to be passed against the petitioner. Impugning the same, it is found that the petitioner had preferred W.P.(MD) No.19797 of 2016 and accordingly, it is found that the above said writ petition was partly allowed in favour of the petitioner i.e., the order of eviction, dated 06.10.2016, had come to be set aside, however, the High Court had not set aside the notice issued under Section 4(1) of the Act, dated 19.09.2016 and accordingly, directed the respondent to consider the matter afresh. It is found that aggrieved by the order passed in the writ petition above mentioned, the petitioner had preferred W.A.(MD) No.29 of 2017. However, it is found that the Division Bench had directed the respondent to pass orders in accordance with law giving liberty to the petitioner to raise all the grounds raised before the Division Bench before the Appellate Authority, in case an order of eviction is to be passed against the petitioner. It is found that thereafter, the respondent has passed an order of eviction, dated 14.03.2017, under Section 5 (1) of the Act. Impugning the same, the petitioner had preferred C.M.A.No.18 of 2017, before the Appellate Authority, namely, Principal District Court, Thoothukudi, as per Section 9 of the Act. As seen above, the Appellate Authority also concurred with the eviction order passed by the respondent and resultantly, dismissed the appeal. Impugning the same, the present civil revision petition has been preferred.

7. It is mainly contended by the learned Senior Counsel for the petitioner that inasmuch as the show cause notice, dated 19.09.2016, issued by the respondent, under Section 4(1) of the Act, is bereft of any ground for the determination as to the fact that the petitioner is an unauthorized occupant of the property concerned, the said notice is invalid in law and therefore, the eviction order passed consequent thereto is also bad in law and hence, in such view of the matter, according to the petitioner, the Appellate Authority



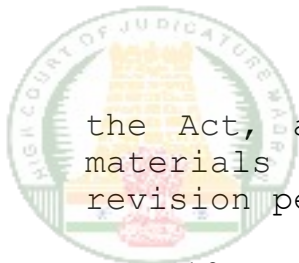
has failed to consider the above said aspect in the proper perspective and in such view of the matter, when the challenge is made to the show cause notice itself by the petitioner holding that it is not issued in terms of the statutory provision as adumbrated by the various decisions of the High Courts and the Apex Court, till the disposal of the civil revision petition, the interim stay order granted in favour of the petitioner should be continued. Further, it is also contended that the Appellate Authority had not considered all the contentions put forth by the petitioner as directed by the Division Bench, in W.A.(MD) No.29 of 2017, and therefore, the order of the Appellate Authority does not stand scrutiny in the eyes of law. It is further contended on behalf of the petitioner that inasmuch as it has been admitted that the land acquisition proceedings have been initiated in respect of the property concerned and the entitlement of the petitioner's predecessor-in-title to the property concerned had been thereby acknowledged and inasmuch as the acquisition proceedings had not been concluded and thereby, the possession of the property had not been taken pursuant thereto, it is the case of the petitioner that on account of the same, the acquisition proceedings stand lapsed and therefore, as per the Acquisition Act, 2013 i.e., Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the petitioner is entitled to the possession of the property concerned as per Section 24(2) of the said Act and this fact has not been gone into and determined by the Appellate Authority and therefore, it is contended that the petitioner has a prima facie case in this civil revision petition and further contending that the respondent has not established that he has taken possession of the property concerned after the order of the Authority concerned legally, this Court already having granted an order of interim stay in favour of the petitioner, in the light of the above situation, should continue the interim stay order and accordingly, prayed for necessary orders in support of the petitioner.

8. Countering the submissions made by the learned counsel for the petitioner for extension of stay, it is the contention of the learned counsel for the respondent that the statutory appeal having been preferred only as against the eviction order, it is futile on the part of the petitioner to contend that the appeal is thrown against the show cause notice issued under Section 4(1) of the Act and thus, it is contended that there is no infirmity in the show cause notice, even if any infirmity or any shortcoming is found in the show cause notice, that by itself would not render the eviction order illegal and therefore, the contention of the learned counsel for the petitioner that the appeal had been directed as against the show cause notice read with the eviction order cannot be countenanced in the eyes of law. Further, it is also contended that as per the Act now prevailing, if the Estate Officer had the information that the petitioner had encroached into the public property belonging to the respondent, he is entitled to initiate proceedings under the Act concerned for eviction of the petitioner



by issuing necessary notice and accordingly, such a notice having been issued by the respondent to the petitioner and consequently, the petitioner having failed to show cause satisfactorily that he is in legal possession of the property concerned, the Estate Officer has rightly passed the order of eviction as against the petitioner. As regards the contention of the petitioner that he is entitled to the benefit of the Acquisition Act, 2013, it is contended that there is no material placed by the petitioner prima facie that the land acquisition proceedings initiated during 1962 had not concluded and in such view of the matter, when as per the records available updated by the Government, inasmuch as the property concerned is found to be owned only by the respondent - Port Trust, this by itself is sufficient to enable the respondent to proceed against the petitioner as he is found to be in unauthorized occupation of the property concerned and other than the sale deed, dated 07.08.1992, no other valid document has been produced by the petitioner to show that he is in legal possession and enjoyment of the property concerned and therefore, according to the learned counsel for the respondent, the land acquisition proceedings had been concluded and thereby the Port Trust being the beneficiary of the proceedings had been inducted into the possession of the property and merely because, the petitioner had subsequently taken possession of the property concerned without any authority would not lead to the conclusion that the land acquisition proceedings had not been concluded and that the Port Trust had not been given the possession of the property concerned and further, it is stated that considering the striking feature that the petitioner has not placed any document to show that he is in legal possession and enjoyment of the property concerned other than the sale deed above mentioned and further, inasmuch as the respondent had by lawful means taken possession of the property concerned following the order of the Appellate Authority on 21.07.2017 itself, even before this Court had granted interim stay, in all fairness, according to the learned counsel for the respondent, considering the fact that a huge project is to be commenced in the property concerned by the respondent running to several crores of rupees, the further continuance of stay would cause irreparable loss and hardship to the respondent and in such view of the matter, on the failure of the petitioner to establish that he is in legal possession of the property concerned at any time prior to 21.07.2017 or at least prima facie after 21.07.2017, it is prayed that the interim stay already granted should be vacated immediately and accordingly the vacate stay petition preferred by the respondent should be allowed.

9. As regards the contention of the learned counsel for the petitioner that the Appellate Authority had not considered the validity of the show cause notice, as urged by him, these are all matters to be determined finally only in the main civil revision petition. Equally, the contention of the petitioner that the land acquisition proceedings had not been concluded and thereby, the possession having not been taken by the respondent - Port Trust, the petitioner would be entitled to seek the benefit of Section 24(2) of



the Act, also is a matter to be determined on the basis of the materials placed by the respective parties only in the main civil revision petition.

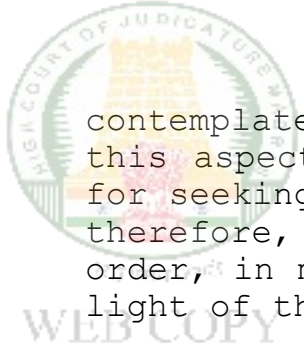
10. As far as the request of the petitioner to continue the interim stay order or the prayer of the respondent to vacate the interim stay already granted, for the determination of this issue, in my considered opinion, it is for the petitioner to establish prima facie that he is in valid possession and enjoyment of the property concerned. As regards the said possession, as rightly argued by the learned counsel for the respondent, other than the copy of the sale deed, dated 07.08.1992, said to have been executed by the petitioner's vendor in favour of the petitioner as regards the property concerned, no other document has been pressed into service by the petitioner to show that he is in legal possession and enjoyment of the property concerned. If really, according to the petitioner, he and his predecessor-in-title had been in possession and enjoyment of the property concerned in accordance with law, as rightly put forth by the learned counsel for the respondent, at least some documents would have been produced to show that they had been in legal possession and enjoyment of the property concerned as claimed by the petitioner. However, not even a scrap of paper, worth acceptance, has been placed to show that the petitioner and his predecessor-in-interest had been in possession and enjoyment of the property concerned legally. In such view of the matter, it is found that when prima facie A-Register marked in the proceedings would go to disclose that it is only the respondent, who is the owner of the property concerned and accordingly, it is further found that there is no material to show that the land acquisition proceedings initiated during the year 1962 in respect of the property concerned and other properties had not been concluded and still persisting and when the A-Register pertaining to the property concerned is maintained by the Government as updated only disclose that the respondent - Port Trust is the owner of the property concerned, it is found that as rightly argued by the learned counsel for the respondent, it has to be only prima facie held that pursuant to the conclusion of the land acquisition proceedings, the respondent - Port Trust had been entrusted with the possession of the property concerned and accordingly, as per the updated Register maintained by the Government, it is only the respondent - Port Trust, who is shown to be the owner of the property concerned. Countering the said position, as rightly argued by the learned counsel for the respondent, the petitioner has not placed any material at least some revenue records to hold that his possession had been acknowledged by the concerned Authority one way or the other and accordingly, he is in possession and enjoyment of the property concerned. Had there been some material prima facie placed on the part of the petitioner to show that he is in legal possession and enjoyment of the property concerned, the position would have been different and taking note of the same, there would be no hesitation in extending the order of interim stay granted in favour of the petitioner. At least, as argued by the learned counsel for



the respondent, the petitioner should have endeavoured to produce the Patta and other revenue records to show that he is in possession and enjoyment of the property concerned. However, no such document is forthcoming. Accordingly, it is found that holding that the petitioner is only an unauthorized occupant of the public property, the respondent had initiated proceedings under the Act and finally the eviction order has been passed by the respondent, which has been confirmed by the Appellate Authority also.

11. No doubt, this Court has granted interim stay on the failure of the respondent to file counter on the adjourned date. However, as now seen from the materials placed, it is found that even prior to the said order of stay passed by this Court, the respondent had taken possession of the property concerned in accordance with law on 21.07.2017 and this could be seen from the communication issued by the Tahsildar, Tuticorin, dated 21.07.2017, as seen from the typed set of papers furnished by the respondent. This document is not shown to be untrue or unacceptable by the petitioner in any manner. Further, it has not been established by the petitioner prima facie that he still continues to be in possession and enjoyment of the property concerned from 21.07.2017 at least to show his entitlement for the continuance of the interim stay order. In such view of the matter, it is found that the petitioner has miserably failed to establish that he continues to be in legal possession and enjoyment of the property concerned. On the other hand, it is seen that the respondent has placed adequate and convincing material to show that the possession of the property concerned had been duly taken by the authority concerned on 21.07.2017 itself. In such view of the matter, it is found that the further continuance of the interim stay order would not meet the ends of justice in any manner.

12. It is the case of the respondent that the Port Trust is the lawful owner. On the other hand, other than the copy of the sale deed, dated 07.08.1992, no other reliable material worthwhile acceptance as per law had been placed by the petitioner to show that he has legal title to the property concerned. As adverted above, the petitioner has not established that he is in legal possession of the property concerned pursuant to the above said sale deed. Now coming to the contention of the respondent that considering the fact that the respondent is shown to be the lawful owner of the property concerned, it is found that the respondent has endeavoured to implement a mega scheme and accordingly, ventured into a project running to several crores of rupees in the property concerned and accordingly, it is found that the respondent had initiated the proceedings under the Act and taken due possession of the property concerned legally and when prima facie and in an overwhelming manner, the respondent has established to have taken the possession of the property concerned on 21.07.2017 and when the petitioner has failed to establish that he had been in possession and enjoyment of the property concerned from 07.08.1992 onwards or at least after 21.07.2017, it is found that considering the mega scheme



contemplated by the respondent to be commenced, it is found that this aspect also would only enure to the benefit of the respondent for seeking the vacation of the stay order granted by this Court and therefore, it is found that the further continuance of the stay order, in my considered opinion, would not meet the justice, in the light of the facts and circumstances of the case as discussed above.

13. In view of the above discussions, the interim stay already granted is vacated and accordingly, stay petition in C.M.P.(MD) No.6658 of 2017, filed by the petitioner is dismissed and the vacate stay petition in C.M.P.(MD) No.7372 of 2017 filed by the respondent is allowed.

sd/-
17/09/2017

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

THE PRINCIPAL DISTRICT COURT CUM APPELLATE AUTHORITY,
THOOTHUKUDI

+1. C.C. to M/S A.ARIVUCHANDRAN Advocate SR.No.30503

ORDER IN
CMP(MD) No.7372 of 2017
IN CMP(MD) No.6658 of 2017
IN CRP(MD) No.1353 of 2017
Date :17/09/2017

MKV-PM-PN-SAR 2/13.09.2017/8P-3C