



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 24.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.A.(MD)No.29 of 2017

and

C.M.P.(MD).Nos.347 and 348 of 2017

S.Suresh Kumar

.. Appellant Petitioner

Vs.

The Estate Officer,
V.O.Chidambaranar Port Trust,
Tuticorin.

... Respondent/Respondent

Writ Appeal has been filed under Clause 15 of the Letters Patent Act, against the order dated 03.01.2017, made in W.P.(MD). No.19797 of 2016 by a learned Single Judge of this Court.

Prayer in WP(MD). 19797/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to the impugned proceedings of the respondent in E(C) 100/3/2009/EST/D 2889 dated 19.09.2016 and the consequential impugned order made by the respondent in E(C) 100/3/2009/EST/D.3092 dated 06.10.2016 and quash the same as illegal.

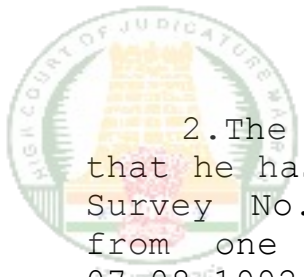
For appellant :Mr.M.Ajmal Khan,
Senior Counsel,
for M/s.Ajmal Associates

For respondent :Mr.G.R.Swaminathan,
for Mr.A.Arivuchandran

JUDGMENT

(Judgment of the Court was delivered by **R.SUBBIAH, J.**)

The appellant is the writ petitioner. He has filed the present writ appeal as against the order passed by a learned Single Judge of this Court in W.P.(MD).No.19797 of 2016, dated 03.01.2017, whereby and whereunder the learned Single Judge has allowed the writ petition in part and thereby quashed the impugned eviction order dated 06.10.2016 alone and remitted the matter back for passing fresh order on merits and in accordance with law, after hearing the petitioner.



2.The case of the appellant before the learned Single Judge is that he has purchased a land to an extent of 90 cents comprised in Survey No.952, Melavithan Village, Tuticorin Taluk, Tuticorin, from one Mr.Abraham Nadar by a registered sale deed dated 07.08.1992. After purchase, he has been in possession and enjoyment of the same till date. While so, treating the appellant as an unauthorised occupant, the respondent has issued the impugned notice, dated 19.09.2016, under Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, calling upon the appellant to show cause as to why he should not be evicted within a period of one week. In the said notice, the grounds of eviction has not been made as per Section 4 of the Act. However, on receipt of the notice, the appellant has sent a representation seeking 40 days time to submit his reply. But, without providing any opportunity, the respondent has passed the impugned order of eviction under Section 5 of the Act holding the appellant as an unauthorized occupant and directed him to vacate and hand over the premises within 15 days of the order, failing which he would be forcefully vacated. The impugned orders did not state any reason as to on what ground the respondent had come to the conclusion that the appellant is an unauthorized occupant. Challenging the eviction notice dated 19.09.2016 as well as the eviction order dated 06.10.2016, the appellant has filed the writ petition.

3.After hearing both sides, the learned Single Judge has quashed the impugned order of eviction dated 06.10.2016 on the ground of violation of principles of natural justice and remitted the matter back to the respondent for passing fresh order on merits and in accordance with law after hearing appellant. Aggrieved over the same, the appellant has filed the writ appeal.

4.The learned senior counsel for the appellant submitted that though the impugned eviction order was quashed on the ground of violation of principles of natural justice, the matter was erroneously remitted back by the learned Single Judge. He has further submitted that the learned Single Judge has declined to quash the impugned show cause notice dated 19.09.2016, though the same is bad in law as the respondent has not stated the grounds on which the appellant is sought to be evicted. In support of his contention, the learned senior counsel for the appellant has relied upon the following decisions:

(a) 1999 (3) CTC 588 (N.Govindan Vs. Chief Personnel Officer);

(b) 2004 (6) SCC 254 (Kusum Ingots Vs. Union of India),

(c) 2014 (6) CTC 427 (Union of India Vs. Textile Technical Tradesman Association).

Thus, he prayed to quash the impugned show cause notice also.

5.Per contra, the learned counsel for the respondent submitted that as per Section 4(1) of the Act, if the Estate Officer is of the opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the Estate Officer is empowered to issue notice in writing calling upon all the persons concerned to show cause why an order of eviction should not be made. The respondent has set out the reason in the impugned notice



for issuing the same. The learned Single Judge has also rightly held that it cannot be said that the show cause notice does not set out any reason for issuing the same. Therefore, the said notice is legally sustainable. He has further submitted that now the appellant has participated in the enquiry and that the enquiry is in progress. If the respondent passes eviction order, the appellant can avail the statutory appeal remedy. Therefore, the present Writ Appeal may be dismissed.

6. Irrespective of the submissions made on either side, in view of the fact that the appellant has participated in the enquiry and the enquiry is in progress, this Court is not inclined to go into the validity of the notice dated 19.09.2016. Therefore, this Court, without going into the merits of the submissions made on either side, is inclined to pass the following orders;

(a) The respondent is directed to complete enquiry and pass appropriate order, on merits and in accordance with law forthwith, after providing sufficient opportunity to the appellant.

(b) If the respondent passes eviction order, the appellant is at liberty to file an appeal before the appropriate appellate authority and to raise all the grounds raised before this Court in the appeal to be filed. In such an event, the concerned appellate authority, without being influenced by the observation made by the learned Single Judge, shall decide the issue on its own merits.

7. This Writ Appeal is, accordingly, disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

THE ESTATE OFFICER,
V.O.CHIDAMBARANAR PORT TRUST,
TUTICORIN. 628 004.

+1cc to M/s.AJMAL ASSOCIATES, Advocate, in SR No.4384

GCG
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