



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2017

CORAM

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

W.P. (MD) No.12230 of 2017

and

WMP (MD) No.9407 of 2017

R.Jesuraja Rathinam

: Petitioner

-vs-

1.The Commissioner of Municipal Administration,
Ezhilagam,
Annexe Building 6th Floor,
Chepauk,
Chennai-600 005.

2.The Commissioner,
Nagercoil Municipality,
Nagercoil-629 001,
Kanyakumari District.

3.The Estate Officer,
Nagercoil Municipality,
Nagercoil-629 001,
Kanyakumari District.

: Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to the impugned notice issued by the 3rd respondent, in his proceedings Nil, dated 30.05.2017 and the consequential notice issued by the 2nd respondent, in his proceedings Nil, dated 02.06.2017 and the consequential order of eviction passed by the 3rd respondent, in his proceedings Nil, dated 16.06.2017, quash the same as illegal.

For Petitioner : Mr.M.Ajmal Khan,
Senior counsel
for M/s.Ajmal Associates

For 1st Respondent : Mr.D.Muruganandam
Additional Government Pleader

For R2 and R3 : Mr.P.Athimoolapandian

O R D E R

<https://hcservices.eprints.gov.in/hcservices/>
The petitioner has come up with the present writ petition, challenging the order passed under the Tamil Nadu Public Premises



(Eviction of Unauthorised Occupants) Act, 1975 (herein-after called as 'Act') and the show cause notice issued for recovery of damages.

2.The case of the petitioner is that he was a licensee under the 2ⁿ respondent municipality since 1978 in respect of the property bearing Door No.12/7-34, Vadesery Village, Agasteeswaram Taluk, Kanyakumari District and one Mr.Krishnan had put up the superstructure, from whom the petitioner purchased the same.

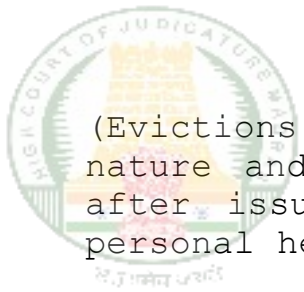
3.It is further stated that in the year 1989, an attempt was made to evict the petitioner and therefore, he instituted the suit O.S.No.261 of 1989 before the Principal District Munsif Court, Nagercoil against the 2nd respondent and the suit was decreed, after contest on 08.04.1994. While so, on 12.02.2016, the 2nd respondent directed the petitioner to surrender the possession, hence, he was constrained to file another suit in O.S.No.46 of 2016 on the file of the Principal District Munsif, Nagercoil against the 2nd respondent.

4.During the pendency of the suit, the 3rd respondent issued a show cause notice under Rule 3 of the Rules framed under the Act, for which he submitted explanation. Thereafter, a notice under Rule 4 was issued by the 2nd respondent, dated 30.05.2017 calling upon him to appear for enquiry on 02.06.2017. On 02.06.2017, when the petitioner orally requested to grant sufficient time, which was refused and an order of eviction was passed treating him as an unauthorised occupant. Thereupon, a notice, dated 16.06.20017 was issued to show cause why a damage of Rs.1,00,000/- could not be demanded from the petitioner. Hence, the present writ petition.

5.Mr.M.Ajmal Khan, learned Senior counsel appearing for the petitioner would urge that the proceedings initiated by the respondents are contrary to the judgment of the civil court passed in O.S.No.261 of 1989 and that in the impugned orders, no reason has been given to evict the petitioner under the Public Premises Act. According to the learned Senior counsel, the show cause notice should contain reasons for evicting the petitioner from the premises. In support of his contention, the learned Senior counsel has placed reliance on the following decisions:-

(i) In AIR 1992 BOMBAY 375 [Minoo Framroze Balsara vs. Union of India], the Division Bench of Mumbai High Court held that the Estate Officer must be satisfied with the public premises are in unauthorised occupation and that person in unauthorised occupation should be evicted as per the provisions of Sections 4 and 5 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

<https://hcservices.courts.gov.in/hcservices> (III) CTC 588 [N.Govindan vs. The Chief Personnel Officer, I.C.F. Madras-38 and another], this court has observed that the provisions of Sections 4 and 5 of Public Premises



(Evictions of Unauthorised Occupants) Act 1971 are mandatory in nature and the Estate Officer shall pass an order of eviction, after issuing show cause notice to the occupant and affording personal hearing before passing order of eviction.

6. Per contra, Mr. P. Athimoolapandian, learned Standing counsel appearing for the respondents 2 and 3 contended that the licence of the petitioner got expired on 31.03.2015 itself and thereafter, the 2nd respondent municipality has not renewed the license. Since the place, which is in the occupation of the petitioner is required for public purposes, for parking the vehicles, the 2nd respondent issued a show cause notice, dated 12.02.2016 to vacate the premises. However, the petitioner instead of giving explanation, instituted the suit in O.S.No.46 of 2016 for declaration, declaring the show cause as null and void.

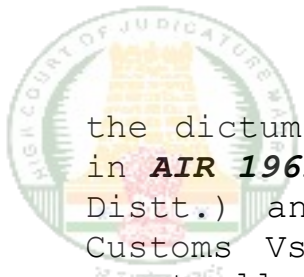
7. It is further contended that the suit is now pending, but no interim relief was granted in favour of the petitioner, and that the 3rd respondent issued a notice under the Act, on 02.06.2017. Since the writ petitioner has not turned up for enquiry, notice under Rule 5 was issued, granting 14 days time to vacate the premises and thereafter, symbolic possession was taken on 16.06.2017.

8. The learned Standing counsel would further submit that the petitioner was not in occupation of the premises, as he sublet the same to one A. Santhanamuthu Pillai and R. Balan. The sub-tenants had given a written request on 16.06.2017 seeking time to vacate and hand over the possession and on 28.06.2017, the sub-tenants had vacated and handed over the possession to the 2nd respondent and on the very next day 29.06.2017, the present writ petition came to be filed. Under section 9 of the Act, an effective alternative remedy of appeal is available to the petitioner and therefore, the writ petition is liable to be dismissed.

9. In reply, the learned Senior counsel appearing for the petitioner, by placing reliance on the decision of the Hon'ble Apex Court reported in **(1998) 8 SCC 1** (*Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others*) submitted that availability of an alternative remedy is not a bar to entertain the writ petition.

10. I have heard the learned counsels and perused the materials available on record.

11. It is true that in the judgment reported in **(1998) 8 SCC 1**, the Hon'ble Apex Court has held that an alternative remedy is not a bar to entertain the writ petition under Article 226 of the Constitution of India. The Hon'ble Supreme Court, taking note of



the dictum laid down by the Constitution Bench decisions reported in **AIR 1961 SC 372** (Calcutta Discount Co. Ltd., Vs. ITO, Companies Distt.) and **AIR 1961 SC 1506** (A.V.Venkateswaran, Collector of Customs Vs. Ramchand Sobhraj Wadhwani) and the other decisions, eventually held as follows:-

WEB COPY

"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of evolutionary era of the constitutional law as they still hold the field.

16. Rashid Ahmed v. Municipal Board, Kairana [AIR 1950 SC 163: 1950 SCR 566] laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting writs. This was followed by another Rashid case, namely, K.S. Rashid & Son v. Income Tax Investigation Commission [AIR 1954 SC 207: (1954) 25 ITR 167] which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which indicated the alternative remedy would not operate as an absolute bar and that writ petition under Article 226 could still be entertained in exceptional circumstances."

20. Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation."

12. There is no quarrel with regard to the proposition suggested by the learned Senior counsel for the petitioner. It is settled law that as a matter of right, the parties cannot be



permitted to invoke Article 226 by bypassing an effective alternative remedy and it could be invoked only on certain contingencies.

13. Be that as it may, the next question arises for consideration of this court is whether the petitioner has made out a case to quash the impugned order.

14. It is to be noted here that the present writ petition is filed mainly contending that the eviction proceedings were initiated contrary to the decision of the civil court rendered in O.S.No.261 of 1989, dated 08.04.1994. A perusal of the judgment made in O.S.No.261 of 1989 reveals that the 2nd respondent municipality was permitted to evict the petitioner by following the procedure, when they required the premises for their own use. Therefore, the contention of the learned Senior counsel for the petitioner on that score, cannot be countenanced.

15. Further, it is the specific case of the respondents that the licence of the petitioner had already expired on 31.03.2015 itself and the subsequent occupation would be treated as 'unauthorised'. Further, for the show cause notice, dated 12.02.2016, no explanation was submitted by the petitioner and he also did not participate in the enquiry conducted, on 02.06.2017. Though the petitioner has contended that he submitted explanation to the show cause notice and sought further time for participating in the enquiry proceedings, no material was placed before this court in support of his case.

16. It is not in dispute that the 2nd respondent had issued show cause notice, dated 12.02.2016 and the eviction order came to be passed after following the procedures. The respondents 2 and 3 have filed their written submission stating that the 3rd respondent has taken physical possession from the sub-tenants on 28.06.2017. In view of the above facts, in my considered view, the decisions referred supra do not support the case of the petitioner.

17. It is seen that the 3rd respondent issued notice, dated 16.06.2017 under sub-rule (1) of Rule 8 calling upon the petitioner to show cause within 30 days, why an amount of Rs.1,00,000/- being the damages caused on account of use and occupation of the premises be recovered from the petitioner. Section 7 of the Act empowers that the Estate Officer to assess the damages on account of use and occupation of the premises by the unauthorized occupants. Hence, the petitioner cannot challenge the show cause notice on the ground of want of jurisdiction.

18. In the light of the above facts, this court is of the view that the petitioner is not entitled to get any relief sought for in the writ petition. However, to meet the ends of justice, this court permits the petitioner to give explanation



for the show cause notice, dated 16.06.2017 within a period of two weeks from the date of receipt of a order copy. On such compliance, the 3rd respondent, after providing opportunity to the petitioner, shall pass orders on the show cause notice, dated 16.06.2017 on merits and in accordance with law.

19. In fine, the writ petition is **dismissed** with the above directions. No costs. Consequently Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To,

1. The Commissioner of Municipal Administration,
Ezhilagam,
Annexe Building 6th Floor, Chepauk, Chennai-600 005.
 2. The Commissioner,
Nagercoil Municipality, Nagercoil-629 001, Kanyakumari District.
 3. The Estate Officer,
Nagercoil Municipality, Nagercoil-629 001, Kanyakumari District.
- +1cc to M/S. AJMAL ASSOCIATES, Advocate SR.No.69913
+1cc to M/S. P.ATHIMOOLA PANDIAN, Advocate SR.No.69651
+1cc to Special Government Pleader, SR.No. 70213

er
MAS/jc/SAR4:29.08.2017:6P-7C

W.P. (MD) No.12230 of 2017
02.08.2017