



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

W.P. (MD) No.21784 of 2017**and****W.M.P. (MD) Nos.18080 to 18082 of 2017**

S.Ramakrishnan

: Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. by the Secretary,
Department of Revenue,
Fort St. George,
Chennai-09.
2. The District Collector,
Sivagangai District,
Sivagangai.
3. The Tahsildhar,
Manamadurai Taluk,
Sivagangai District.
4. The Southern Railway,
Rep. by its Estate Officer,
Divisional Office,
Works Branch,
Madurai.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Order in No.U/W.274/ADEN/Bldgs/MDU, dated 18.09.2017 on the file of the Respondent No.4 as illegal and consequently, direct the Respondents not to evict the Petitioner without issuing alternative place of Accommodation.

For Petitioner
For Respondents 1to3

: Mr.T.Lajapathi Roy
: Mr.T.R.Janarthan,
Additional Government Pleader
: Mr.S.Manohar

O R D E R

[Order of the Court was made by **M.VENUGOPAL, J.**]
Heard the submissions made on either side.

2. No counter is filed on behalf of the Respondents 1 to 4.

3. The stand of the Petitioner is that the lands in Survey Nos.409 and 410 at Anna Nagar, Manamadurai, Sivagangai District, belong to the Railways Department and the said lands are under the occupation of nearly 95 families, who belong to Dalit and Backward Caste Communities for the past 100 years and in fact, the landless persons do not own any other piece of land and they belong to an Economically Weaker and Marginalized Section of the Society. All the residents in the said Survey Nos.409 and 410 as afore-stated are assessed to tax and electricity connection, ration cards, etc., have also been given and indeed, the Manamadurai Municipality had erected street lights and provides drinking water by installing a drinking water tank.

4. At this stage, the Learned Counsel for the Petitioner brings it to the notice of this Court that during the year 2003, the Railways threatened the occupiers that they would be evicted without following the due process of law and one S.Karuppiiah filed a Writ Petition in W.P.No.27010 of 2003 before the Principal Bench at Madras, seeking a relief of Mandamus in directing the Respondents 1 and 2 therein not to evict the occupants from the place of residence in Survey Nos.409 and 410 of Anna Nagar, Manamadurai, Sivagangai District and to allow them to continue their occupation in the present place of residence and this Court was pleased to pass an order of injunction and ultimately, the Writ Petition was dismissed for default, due to non-appearance of the Petitioner therein.

5. The Learned Counsel for the Petitioner contends that the fourth Respondent/Estate Officer of the Southern Railways, Madurai, had issued the impugned order/notice dated 18.09.2017 to all the residents in Ref.No.U/W.274/ADEN/Bldgs/MDU [issued under Sub-Section (1) of Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971], in and by which, it is mentioned that the Petitioner is in unauthorized occupation of Railway land measuring an extent of 69.12 Square Metre by constructing building with Mangalore tiled/AC sheet/RCC roof Opposite to Station building at Manamadurai (near Goods shed) and further, the said impugned order/notice points out that the Petitioner (S.Ramakrishnan) and all other persons, who may be in occupation of the said premises, or any part thereof, are to vacate the said premises, within 15 days from the date of publication of the said order, etc.



6. Apart from that, in the impugned order/notice dated 18.09.2017 of the fourth Respondent, there is a reference to the unauthorized occupation of Railway land measuring an extent of 69.12 Square Metre by constructing building with Mangalore tiled/AC sheet/RCC roof Opposite to Station building at Manamadurai (near Goods shed).

7. There is no two opinion of a primordial fact that a notice issued under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, must contain the description of the public premises clearly, so that, all concerned should know what particular premises this notice relates to, as per the decision in **Bhagat Singh v. Delhi Development Authority** reported in **AIR 1988 Del.174**.

8. It cannot be gainsaid that the ingredients of Section 4(2) of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, are mandatory and not merely directory in character, for the reason, that failure to make an effective reply to the notice for eviction as a consequence of absence or vagueness of the grounds of eviction to be specified in the notice, may result in loss of the occupation of the premises. If the grounds of eviction were not mentioned in the notice, then, a Court of law can hold the notice as an invalid one, notwithstanding the fact that an occupant was otherwise having full requisite knowledge of the grounds upon which his eviction was proposed.

9. It is true that a summary procedure under the Public Premises Eviction Act is prescribed for evicting the tenants or unauthorized occupants or sub-tenants and the same is not violative of Article 19(1)(f) of the Constitution of India, as per the decision of the Hon'ble Supreme Court in **Kaiser-I-Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd.** reported in **2002(8) SCC 182**.

10. As far as the present case is concerned, a mere running of the eye over the contents of the impugned order/notice, dated 18.09.2017 of the fourth Respondent unerringly points out that straightaway, in a simpliciter fashion, the Writ Petitioner and others were required to vacate the premises in question, within 15 days from the date of publication of the impugned order/notice. Strictly speaking, as per Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the Petitioner must be given a show cause notice and in fact, the Petitioner shall submit his objections/representation and then, it is for the fourth Respondent to consider the contents of the representation/submission made by the Petitioner and to take a final order/decision in the subject matter in issue. It is open to the Petitioner and others concerned to produce necessary



documentary or oral evidence to support their claim. Besides this, a personal hearing, if the concerned Petitioner so desires, then that opportunity of personal hearing is to be given by the fourth Respondent/Estate Officer.

11. Be that as it may, in view of the foregoing detailed discussions and also this Court, on an over-all assessment of the present facts and circumstances of the case, in a cumulative fashion, is of the considered view that an opportunity to put forth/air the Petitioner's views/grievances had not been provided by the fourth Respondent, keeping in tune with the ingredients of Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. As a matter of fact, straightaway, the impugned order/notice dated 18.09.2017 was passed by the fourth Respondent and the same does not stand a moment scrutiny in the eye of law. Therefore, this Court, without any haziness or hesitation, to prevent an aberration of justice, interferes with the impugned order/notice dated 18.09.2017 of the fourth Respondent and sets aside the same. Viewed in that perspective, the Writ Petition succeeds.

12. In fine, the Writ Petition is allowed for the reasons assigned in this Writ Petition. No costs. Consequently, the connected miscellaneous petitions are closed.

13. Before parting with the case, this Court makes it lucidly clear that allowing of the present Writ Petition by this Court will not preclude the fourth Respondent/Estate Officer of the Southern Railways to issue a fresh notice under the relevant provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Furthermore, if such a fresh notice is given to the Petitioner conforming to the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, then, the Petitioner shall submit his objections to the fourth Respondent and soon after receipt of the objections/representation from the Petitioner, the fourth Respondent shall look into the same and pass necessary final orders in the subject matter in issue, of course, after providing an opportunity of personal hearing (if the Petitioner so desires/advised) and it cannot be gainsaid that the fourth Respondent, at the time of passing final orders, shall advert to the each and every point and answer the same in a complete and comprehensive fashion.

Sd/-

Assistant Registrar(T&P)

/True Copy/



To

1. The Secretary,
State of Tamil Nadu,
Department of Revenue,
Fort St. George,
Chennai-09.
2. The District Collector,
Sivagangai District,
Sivagangai.
3. The Tahsildhar,
Manamadurai Taluk,
Sivagangai District.
4. The Estate Officer,
Southern Railway,
Divisional Office,
Works Branch,
Madurai.

+ 1 cc TO Mr.T.Lajapathi Roy , Advocate in SR No. 89720
+ 1 cc TO Mr.S.Manohar , Advocate in SR No. 89733
+ 1 cc TO The Special Government Pleader in SR No. 89880

SML

AE/KK/SAR2/13.12.2017/5P/8C

Order made in
W.P. (MD) No.21784 of 2017
Dated: 27.11.2017