



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2017

CORAM:

THE HONOURABLE Mr.JUSTICE K.RAVICHANDRABAABU

W.P. (MD) No.19797 of 2016

and

W.M.P. (MD) Nos.14294 and 14295 of 2016

S.Suresh Kumar

... Petitioner

Vs.

The Estate Officer,
V.O.Chidambaranar Port Trust,
Tuticorin 628 004.

... Respondent

PRAYER: Petition is filed under Article 226 of the Constitution of India, 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 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 Petitioner	:	Mr.A.Ajmal Khan, Senior Counsel to Ajmal Associates
For Respondent	:	Mr.G.R.Swaminathan, ASGI for Mr.A.Arivuchandran

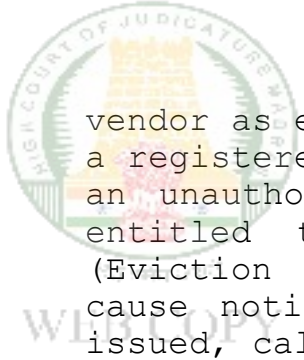
O R D E R

This Writ petition is filed challenging the show-cause notice dated 19.09.2016 and the order of eviction passed on 06.10.2016.

2.Heard Mr.Ajmal Khan, learned Senior Counsel appearing for the petitioner and Mr.G.R.Swaminathan, learned Assistant Solicitor General appearing for the respondent and perused the materials placed before this Court.

3.The case of the petitioner in short is as follows:

The petitioner is in possession and enjoyment of the property in dispute as a rightful owner having purchased the same from his

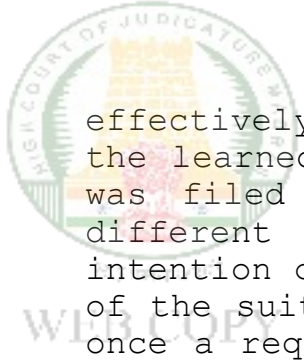


vendor as early as in 1992, who in-turn purchased the same by way of a registered sale deed dated 09.10.1964. Thus, the petitioner is not an unauthorized occupant and consequently, the respondent is not entitled to invoke the provisions under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. However, a show-cause notice impugned in this Writ petition dated 19.09.2016 was issued, calling upon the petitioner to show-cause as to why an order of eviction shall not be passed against him. The petitioner through his communication dated 03.10.2016 sought 40 days time for filing certain documents, which are to be collected from Government offices and also sought for personal hearing. Even though such request was received by the respondent, without considering the same and giving sufficient opportunity to the petitioner to put-forth his case, the consequential impugned order of eviction dated 06.10.2016 came to be passed, directing the petitioner to vacate the premises within 15 days.

4.A counter affidavit is filed by the respondent wherein, it is contended that the subject matter property belongs to the respondent / Port Trust, in which, the petitioner is an unauthorized occupant and consequently, the proceedings were rightly initiated under the above said Act by following due procedure. It is further contended that the petitioner did not reply to the show-cause notice.

5.Apart from filing such counter affidavit, the learned Assistant Solicitor General also submitted that the petitioner has already filed a civil suit in O.S.No.268 of 2016 on the file of the Additional District Munsif Court, Tuticorin on 14.07.2016 against the very same respondent and another, seeking for bare injunction and such fact was not disclosed in the affidavit filed in support of this Writ petition. He further contended that as against the impugned order of eviction in this Writ petition, a statutory appeal lies before the Appellate Authority. Even though he made such submission, he is fair enough to accept the position that the petitioner has made a request for adjournment by 40 days for production of the documents and the impugned order of eviction came to be passed without passing an order on such request and giving a further date of hearing to the petitioner.

6.The learned Senior Counsel appearing for the petitioner vehemently contended that the very show-cause itself is bad since the respondent has not stated the grounds on which the petitioner is sought to be evicted. Therefore, he submitted that the petitioner is not given a reasonable opportunity to defend the proceedings



effectively. Insofar as the filing of the said suit is concerned, the learned Senior Counsel submitted that admittedly, the said suit was filed much earlier to the issuance of show-cause notice on different cause of action and therefore, there is no willful intention on the part of the petitioner in not disclosing the filing of the suit in the present Writ petition. He further contended that once a request is made by the petitioner, seeking for adjournment, it is for the respondent either to consider or reject the same, however, by communicating such decision on the representation made by the petitioner seeking for adjournment. Thus, he submitted that in the absence of such an order passed on the petitioner's representation seeking for adjournment, the impugned order of eviction passed straight away, cannot be sustained.

7. Heard both sides.

8. It is true that the petitioner was issued with the show-cause notice on 19.09.2016 calling upon him to show-cause as to why he should not be evicted by clearly indicating that he is an unauthorized occupant of the public premises mentioned in the schedule of the said show-cause notice. Perusal of the schedule would show that the respondent has claimed the subject matter land as port's land. Therefore, it is evident that the respondent has claimed the land as their property, thereby, bringing the same under the category of public premises and consequently, called upon the petitioner to show-cause. When such factors are apparent on the face of the show cause notice itself, I don't think that the learned Senior Counsel for the petitioner is justified in contending that the show-cause notice does not set out the reasons for issuing the same. Needless to say that it is for the petitioner to satisfy the respondent, as to how his possession is not an unauthorized one or the property in dispute is not the property belonging to the Port Trust. Hence, the impugned show-cause notice can not be set aside as this Court finds the same is in order.

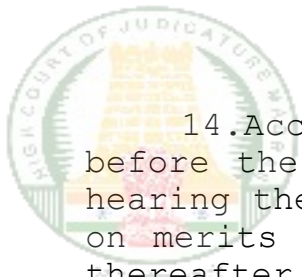
9. In such view of the matter, this Court is of the view that the petitioner has to only satisfy the respondent by giving explanation / objection with relevant material documents. It is seen that the petitioner has sought time for production of those documents through his representation dated 03.10.2016. Though it is admitted by the respondent in the impugned order of eviction that the petitioner through his authorized representative has appeared on 03.10.2016, it is not stated as to what was the order passed on the petitioner's representation seeking for adjournment. Therefore, it is evident that the respondent has proceeded to pass the order on 06.10.2016 without considering and passing any order on the request



11.No doubt, it is stated that as against the order of eviction, the petitioner has got a statutory appellate remedy. Since this Court has found that the order of eviction was passed in violation of principles of natural justice, it is not necessary to drive the petitioner to file such a statutory appeal. Insofar as the other contention with regard to the filing of the civil suit and non disclosure of the same in this Writ petition is concerned, this Court is of the view that certainly, the petitioner in all fairness, should have disclosed such fact in this Writ petition. However, having seen that the said suit has been filed much earlier to the issuance of show-cause notice on different set of cause of action, I find that such non-disclosure is not materially affecting the present issue involved in this case.

12. Accordingly, the Writ petition is allowed in part and consequently, the impugned order of eviction dated 06.10.2016 is set aside and the matter is remitted back to the respondent for passing fresh order on merits and in accordance with law after hearing the petitioner.

13. The learned Senior Counsel appearing for the petitioner submitted that the petitioner would appear with relevant documents on 17.01.2017 before the respondent. The learned Assistant Solicitor General appearing for the respondent submitted that on the said day, respondent will hold the enquiry and pass appropriate orders thereafter.



14. Accordingly, the Writ petitioner is directed to appear before the respondent on 17.01.2017 with relevant documents and on hearing the petitioner, the respondent shall pass appropriate orders on merits and in accordance with law within a period of two weeks thereafter. No costs. Consequently, connected W.M.Ps. are closed.

WEB COPY

/True Copy/

Sd/-

Assistant Registrar (AS)

Sub Assistant Registrar

To
The Estate Officer,
V.O.Chidambaranar Port Trust,
Tuticorin 628 004.

+1cc to Ajmal Associates, Sr.No.377
+1cc Mr.A.Arivuchandran, Advocate, Sr.No.507

nbg
mi/mpa/em/sar-2/04.01.2017/5p/4c

W.P. (MD) No.19797 of 2016
03.01.2017