

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on: Orders Pronounced on:
04.10.2018 23.11.2018

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition Nos.21077, 21078 and 21079 of 2009
and
M.P.Nos.1 and 2 of 2009

P.M.Raju

... Petitioner in W.P.No.21077 of 2009

M/s.Abdul Najeeb And Faizal,
Rep. by its Proprietor,
Mr.Abdul Najeeb,
No.18, Basin Bridge Road,
Chennai 600079.

... Petitioner in W.P.No.21078 of 2009

M/s.T.M.Usman Haji & Company,
Rep. by its Proprietor,
Mr.T.M.Usman Haji,
No.15, Basin Bridge Road,
Chennai 600079.

... Petitioner in W.P.No.21079 of 2009

-Versus-

1. The Corporation of Chennai,
Rep. by its Commissioner,
Ripon Buildings,
Chennai 600003.
2. The Assistant Commissioner/District
Revenue Officer,
Region-2, Corporation of Chennai,
47, Basin Bridge Salai,
Chennai-600079.
3. The Regional Officer,
Region-2, Corporation of Chennai,
47-Basin Bridge Salai,
Chennai 600079.

... Respondents in all Writ petitions

Prayer in W.P.No.21077 of 2009:- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents to put back the petitioner in possession of the land in Survey No.599/11, No.11 Basin Bridge Salai, Chennai 600079 from where the petitioner was carrying on business till the illegal demolition and eviction on 10.10.2009 and for a direction to the respondents to pay a compensation of Rs.30,00,000/- (Rupees Thirty Lakhs only) to the petitioner for the loss of stocks and loss of superstructure put up by the petitioner.

Prayer in W.P.No.21078 of 2009:- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents to put back the petitioner in possession of the land in Survey No.597/2, 599/6 and 599/11, No.18, Basin Bridge Salai, Chennai 600079 from where the petitioner was carrying on business till the illegal demolition and eviction on 10.10.2009 and for a direction to the respondents to pay a compensation of Rs.30,00,000/- (Rupees Thirty Lakhs only) to the petitioner for the loss of stocks and loss of superstructure put up by the petitioner.

Prayer in W.P.No.21079 of 2009:- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents to put back the petitioner in possession of the land in Survey No.599/9, No.15, Basin Bridge Salai, Chennai 600079 from where the petitioner was carrying on business till the illegal demolition and eviction on 10.10.2009 and for a direction to the respondents to pay a compensation of Rs.50,00,000/- (Rupees Fifty Lakhs only) to the petitioner for the loss of stocks and loss of superstructure put up by the petitioner.

For Petitioner(s) : Mr.T.Sai Krishnan for
Petitioner in all Writ
Petitions

For Respondents : Mr.S.R.Rajagopal,
Addl. Advocate General,
Assisted by Mr.R.Arunmozhi,
Standing Counsel for
Respondents

COMMON ORDER

These writ petitions have been filed seeking a direction to the respondents to put back the petitioners in possession of the respective land situated at Basin Bridge Salai, Chennai 600079 from where they were carrying on their business till the

demolition and eviction on 10.10.2009 and for a direction to the respondents to pay a compensation to the petitioners for the loss of stocks and loss of superstructure put up by them.

2. Since the issues involved in these writ petition are common, they were taken up together, heard and are being disposed of by this common order.

3. The common case of the petitioners in brief is as follows:- The petitioners claim to be the lessees under the respondent corporation in respect of the lands situate at Basin Bridge Road, Chennai and they were carrying on timber business in the said land. They were in possession of the land in question for more than 60 years. The respondent had periodically enhanced the rent and the petitioners had been paying the rent regularly without any default. When there was exorbitant increase in rent and the respondents had taken steps to dispossess the petitioners, the petitioners filed writ petitions in W.P.No.42843 of 2002 and 43055 of 2002 before this court to protect their possession and a Division Bench of this while disposing the writ petition directed the petitioners to approach the Corporation of Chennai, with a representation highlighting their grievance and directed the respondent corporation to issue notice to all of them, have a dialogue with them, and arrive at an amicable solution by passing an order fixing reasonable rent. But, the above said order was not complied with and obeyed by the corporation and the 1st respondent had not called for any such meeting.

4. While so, on 11.06.2008, the respondents have issued show cause notice, purported to have been issued under Rule 3 of The Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, calling upon the petitioners to explain as to why they should not be evicted from the places where they were doing business for which the petitioners have sent suitable reply by way of representation dated 16.07.2018. Subsequently, the petitioners in W.P.No.21077 of 2009 and W.P.No.21079 of 2009 had filed writ petitions in the present writ petitions in W.P.No.16043 of 2008 and W.P.No.16020 of 2018 seeking copy of the order of eviction passed against them by the respondent corporation and this court, by order dated 16.07.2008, dismissed the writ petition on the ground that already an order of eviction had been passed against the petitioner, however, the respondents were directed to serve the certified copy of the order of eviction to the respective petitioners to enable them to prefer appeals before the appellate authority concerned. Pending furnishing of copies of order, the respondents were restrained from taking any coercive steps to evict the petitioner. Subsequently, the petitioners made applications seeking certified copies of the orders of eviction. But, without

serving the copy of the orders, on 10.10.2017, all of a sudden, the respondents with the help of the police and heavy earth movers, demolished the shops of the petitioners, without any prior notice whatsoever and the requests of the petitioners for grant of time to remove the goods were not considered by the respondents. The entire buildings of the petitioners were pulled down and the entire timber worth lakhs and lakhs of rupees were damaged and the petitioners could not retrieve the timbers from the debris. Since the eviction had been carried out without following the due process of law and the respondents had caused severe damages to the petitioner, they have come up with the present writ petitions.

5. The respondent corporation filed a common counter affidavit, wherein it has been inter alia contended that the petitioners were unauthorized occupants of the lands in question viz., the petitioner in W.P.No.21077 of 2009 was in unauthorized occupation of the land measuring an extent of 2400 square feet, comprised in S.No.599/99 in V.O.C.Nagar Village, bearing Door No.111, Basin Bridge Road; the petitioner in W.P.No.21078 of 2009 was in unauthorized occupation of the land measuring an extent of 2397 square feet of land comprised in S.No.599 in V.O.C.Nagar Village, situate at Door No.8 Basin Bridge; and the petitioner in W.P.No.21080 of 2009 was in occupation of an area measuring an extent of 3 grounds and 1840 square and 1 ground and 197 square feet of lands comprised in S.Nos.5996/6, 599/11 & 297/2 (part) in V.O.C.Nagar Village situate at Door No.15, Basin Bridge, Chennai. As the lands were required for the construction of grade separator at Basin Bridge Road and Old Jail Road Junction, necessary action had been initiated under The Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act) and based on the orders of this court in a batch of writ petitions, all such shops including the petitioners' shops were demolished and grade separator was constructed and had also been opened for traffic long ago. Based on the resolution passed in the council of the corporation dated 19.06.2008, in Resolution No.285/2008, orders were issued to the petitioner for eviction from the premises within the time stipulated thereunder, but, they did not do so and therefore, the corporation had taken over possession.

6. So far as the averments with regard to the compensation amounts claimed in the writ petitions are concerned, the respondent corporation had stated that they are only imaginary figures. Further, according to the respondent corporation, since the petitioners failed to vacate the premises within the time mentioned in the eviction notice, the respondent corporation had no option except to evict them from the premises and the petitioners who were in occupation of the lands in question do not have any legal right to claim compensation. In fact, the

petitioners are unauthorized occupants of the lands in question belonging to the corporation were liable to pay arrears of damages fee for the use and occupation of the lands to the corporation.

7. The learned counsel for the petitioner would contend that the occupation of the petitioners in the lands belonging to the corporation was lawful one and the rent for the properties were periodically enhanced by the corporation. Further, according to the learned counsel, the petitioners had been paid rent regularly without any default, therefore, the occupation of the petitioners in the lands in question cannot be termed as unauthorized. Even in the earlier writ petitions filed by the petitioners, the Division Bench of this court directed the corporation to consider the claim of the petitioners regarding enhancement of rent, but, the orders of this court were not obeyed by the corporation.

8. The learned counsel for the petitioner further added that when the respondent corporation had issued show cause notice to the respective petitioners, the same were challenged by the petitioners in W.P.No.21077 of 2009 and W.P.No.21079 of 2009 before this court by way of writ petitions in W.P.No.16043 of 2009 and W.P.No.16020 of 2008 and this court, while disposing the writ petition, had specifically permitted the petitioners therein to make necessary application for certified copy of eviction order and directed the respondent corporation to issue a copy of the order of eviction on filing such applications from the petitioners. But, no such copy of orders were furnished to the petitioners despite their applications for certified copy of eviction order to enable them to prefer appeals. Without passing any order of eviction, the respondent corporation had unlawfully demolished the constructions put up by the respective petitioners and evicted them forcibly from the possession of the lands. Therefore, the petitioners are entitled for repossession and also for damages.

9. In support of this contentions, the learned counsel for the petitioners relied on the following judgments:-

1. Lala Bishambar Nath v. The Agra Nagar Mahapalika Agra, (1973) 1 SCC 788;
2. Meera Nireshwalia v. The State of Tamil Nadu, 1990 (2) LW 621;
3. State of Haryana v. Mohinder Pal, (2001) 9 SCC 292;
4. Coimbatore Bar Association v. State of Tamil Nadu, (2008) 3 LW 687; and
5. Krishnammal v. State of Tamil Nadu, 2012 (5) MLJ 772.

10. On the other hand, Mr.S.r.Rajagopal, the learned Additional Advocate General contended that the petitioners were in unauthorized occupation of the lands belonging to the corporation and no lease or license was granted to the petitioners. The amounts collected from the petitioners were towards damages for the unauthorized occupation of the lands in question and the same could not be considered as rent as claimed by the petitioners.

11. The learned Additional Advocate General further contended that when the petitioners had challenged the show cause notice, it was specifically contended by the respondent corporation that eviction order had already been passed against the petitioners and this court accepting contention of the respondent corporation, had directed the corporation to furnish a copy of the order of eviction to the respective petitioner. Therefore, according to the learned Additional Advocate General it is not now open to the petitioners to contend that no order of eviction had been passed and they had been evicted without following the due process of law. After the issuance of show cause notice, enquiry was conducted and eviction order had been passed after following the due process of law and the petitioners were given sufficient time to vacate the premises. But, when the petitioners failed to vacate the premises, the respondent corporation having had no other option, had taken over the possession.

12. The learned Additional Advocate General further added that insofar as the claim for repossession and damages are concerned, absolutely there is no material to show that the petitioners had suffered damages as alleged in the writ petitions. The petitioners who were in unlawful occupation are not entitled for any damages much less repossession.

13. I have considered the rival submission carefully.

14. The predominant contention of the learned counsel for the petitioners is that they were evicted without following the due process of law and, therefore, they are entitled for repossession and also for damages. It is an admitted fact that the petitioners were in occupation of the disputed lands. It is also not in dispute that earlier when show cause notices were issued to the petitioners under The Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, they had submitted their explanations for the show cause notice individually. Subsequently, they had filed writ petitions before this court

challenging the notice regarding payment of arrears of rent wherein the petitioners had only insisted for certified copy of the eviction order, enabling them to file an appeal. Having considered the above circumstances, on 16.07.2008, while disposing of the writ petitions in W.P.Nos.16020 , 16043, 16433, 16552 and 16553 of 2008, this court passed the following order:-

"3. Mr.P.S.Raman, learned Additional Advocate General appearing for the respondents, quoting Section 5 of Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, read with rule 7 of Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Rules submitted that as per the said provisions of law, the orders of eviction were served by way of affixture. In case, the petitioners require certified copy of the orders so as to file appeal, the same will be served on them on receipt of necessary applications; that when effective appeal remedy is provided under the Act, the writ petitions are not maintainable and till the period provided for filing appeal expire, the respondents will not dispossess the petitioners.

4. Considering the submission of the counsel on either side, the petitioners are permitted to submit necessary applications before the respondents seeking certified copy of the orders of eviction within a period of one week from today. On receipt of such applications from the petitioners, the respondents are directed to furnish certified copy of the orders within a period of one week thereafter and it is open to the petitioners to file an appeal before the appellate authority within a period of 30 days as specified in the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act. In the mean time, the respondents are restrained from taking any coercive steps evicting the petitioners."

15. From the above, it is clear that already an order had been passed against respective petitioner for eviction, but, according to the petitioners, the copy of the orders of eviction were not served on them. Whereas the corporation contended that the orders of eviction had been served upon the petitioners by way of affixture. In those circumstances, the respondents were directed to serve a copy of the order of eviction to the respective petitioners to enable them to prefer appeal. The

petitioners still contended that the copy of the orders of eviction were not furnished to the petitioners. Be that as it may, it is an admitted fact that the orders of eviction had already been passed against the petitioners under The Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act. In such circumstances, it is not open to the petitioners now to contend that they were evicted without following the due process of law and that they are entitled for repossession. Further, it is also not in dispute that on the disputed lands a grade separator had already been constructed and declared opened for public use long ago and the public have also been using the same, therefore, even assuming there were certain irregularities in the eviction on the part of the respondent corporation, in view of the above factual scenario, the possession of the lands in question cannot be restored to the petitioners.

16. So far as the claim for damages is concerned, it is the case of the petitioners that the respondent corporation had unauthorizedly demolished the superstructure put up by the petitioners in the lands in dispute and that the timbers worth about several lakhs of rupees stored in the premises were damaged in the eviction process. Except such averments, there is absolutely no other material available on record to establish the same. According to the respondent corporation, despite sufficient time granted to vacate the premises pursuant to the orders of eviction, the petitioners did not do so and therefore, the respondent corporation had evicted the petitioners from the premises, but, no damages were caused to the properties belonged to the petitioners as alleged in the writ petition. It is a disputed question of fact and it is a matter of evidence. It is the settled law that the disputed question of facts cannot be resolved in a writ proceedings. If at all the petitioners had sustained any loss or damages, it is always open to them to seek for damages in the manner known to law by proving and establish his claim by letting in evidence, both oral and documentary and this court cannot award any damages in the writ proceedings based on the averments made in the affidavit filed in support of the writ petition. So far as the judgments relied on by the learned counsel for the petitioners are concerned, those were cases where the court had awarded compensation where the State had acted high-handedly and it was also established by the claimants that they had suffered damages. The facts involved in the instant writ petitions are entirely different and therefore those judgments cannot be made applicable to the present cases.

17. For the foregoing reasons, this court is of the view that the writ petitions are devoid of merits and therefore, they are liable to be dismissed.

18. In the result, the writ petitions are dismissed. No costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk

To

1. The Commissioner, Corporation of Chennai, Ripon Buildings, Chennai 600003.
2. The Assistant Commissioner/District Revenue Officer, Region-2, Corporation of Chennai, 47, Basin Bridge Salai, Chennai-600079.
3. The Regional Officer, Region-2, Corporation of Chennai, 47-Basin Bridge Salai, Chennai 600079.

+1cc to M/s.T.Kokilavane, Advocate, S.R.No.79900

+1cc to M/s.R.Arunmozhi, Advocate, S.R.No.79969

Common Order in
Writ Petition
Nos.21077, 21078
&
21079 of 2009

RV(CO)
SSM(08/01/2019)