

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.2888 to 2892 of 2014
M.P.Nos.1 to 1 of 2014

Judgment reserved on 28.03.2018	Judgment pronounced on 11.04.2018
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CRP (PD) No.2888 of 2014

A.Veerasingam

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Petitioner

Vs.

Brigadier
 Stationer Commander/Estate Officer
 Station Headquarters
 Chennai – 600 009.

...

Respondent

PRAYER in C.R.P.(PD) No.2888/2014: Civil Revision Petition filed under Article 227 of the Constitution of India against decree and judgment passed in CMA No.106 of 2012 on the file of the Principal Judge, City Civil Court, Chennai dated 21.07.2014 in confirming the order passed by the respondent herein in proceedings No.4022/XXV/[Part], Veerasingam/1/Q3 Land, dt.05.11.2012.

For Petitioner Mr.ARL.Sundaresan,
in CRP No.2888 : Senior Counsel for
to 2891 of 2014 Mr.C.Muralikrishnan

For Petitioner in Mr.B.S.Gnanadesikan
CRP 2892/2014 : Senior Counsel for
 M/s.BSG Firm

For Respondent : Mr.P.G.Santhosh Kumar
in all CRPs

COMMON ORDER

These Civil Revision Petitions are filed against the common judgment passed in CMA Nos.106 to 110 of 2012 on the file of the Principal Judge, City Civil Court, Chennai dated 21.07.2014 in confirming the order passed by the respondent herein in proceedings No.4022/XXV/[Part], Veerasamy/1/Q3 Land, No.4022/Bunk XXXIII/Vani/5/Q3 Land, No.4022/XXV(King's BK) Kannan/2/Q3 Land, No.4022/Bunk XXXIII-5/Hanifa/6/Q3 Land and No.4022/XXV/King's Bk/sivagnanam/3/Q3 Land, all dated 05.11.2012.

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2. The respondent and issues involved in all the Civil Revision Petitions are one and the same and therefore, they are disposed of by this common order.

3. The petitioners are occupants of the shops belonging to the respondent based on the license. The lease expired on 30.06.2009. Subsequently, the said license was not extended. The respondent issued notice to the petitioners as to why they should not be evicted from the shops as they are unauthorised occupants. The respondent also called upon the petitioners to vacate the said premises under their occupation as the same is unsafe for human inhabitation and is also required for the Troops of the Indian Army. On three occasions, the petitioners filed writ petitions challenging the proceedings of the respondent before this Court. This Court directed the petitioners to file affidavit and directed the respondent to consider the same and pass orders. In compliance of the said order of this Court, the petitioners filed proof affidavit. The respondent, considering the contention of the petitioners and reasons for evicting them, held that the petitioners are unauthorised occupants and ordered eviction. Against the said order, the petitioners filed CMA Nos.106 to 110 of 2012. The Principal Judge, City Civil Court, Chennai, considering the contentions of the petitioners and materials on record, dismissed all the appeals confirming the order of the Estate Officer.

4. Against the said order of dismissal dated 21.07.2014 made in CMA Nos.106 to 110 of 2012, the petitions have filed the present Civil Revision Petitions.

5. The learned Senior Counsel appearing for the petitioners in CRP (PD) Nos.2888 to 2891 of 2014 and the learned Senior Counsel appearing for the petitioners in CRP (PD) No.2892 of 2014 contended that even after the expiry of the license, the petitioners were paying the rent, electricity and water charges to the respondent. The respondent, having received the same, cannot term the petitioners as unauthorised occupants. The learned Judge failed to see that the petitioners have filed proof affidavit and they were not cross examined. In view of the same, it must be presumed that the respondent accepted the contention of the petitioners that they are not unauthorised occupants and license is deemed to have been extended. The learned Appellate Judge erred in holding that the judgment reported in **AIR 1995 Calcutta 126 [Malayakumar Banerjee v. Union of India and others]** is applicable to the facts of the present case. On the other hand, only the judgment reported in **AIR 2008 SCC 876(1) [New India Assurance Co. Ltd. v. Nusli Neville Wadia and another]** is

applicable to the facts of the present case as the respondent has accepted the rent and other charges paid by the petitioners. The learned Appellate Judge failed to see that even after evicting one of the tenants, the respondent has not used the petition premises and the same is kept as vacant. The respondent received the rent and other charges and therefore as per Section 2(2) (f) of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, it amounts to payment of rent for authorised occupation.

5(a) The learned Senior Counsel appearing for the petitioners in both the Civil Revision Petitions contended that the Estate Officer has issued notice under Section 4 of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and called upon the petitioners to vacate from the petition premises on the ground that the same is unsafe for human habitation. Subsequently, in the year 2011, the Estate Officer issued a Show Cause Notice under Section 4 of the Act stating that the premises is required for use by Indian Army Troops. The Estate Officer has issued two contradictory Show Causes Notices. Further, the authorities, even after expiry of license period, demanded rent and other charges and the petitioners paid the same. The authorities received the rent and issued receipts for receiving the rent. Once rent is received, the occupier of the

premises is an authorised occupant and therefore the petitioners cannot be termed as unauthorised occupants.

5(b) The petitioners filed proof affidavit. The respondent did not cross examine the petitioners with respect of averments made in the proof affidavit. In view of the non-cross examination, the respondent has admitted the averments in the proof affidavit filed by the petitioners. The respondent must first prove that their requirement is bonafide and must let in evidence to the effect to prove that the requirement of the respondent is bonafide. The Estate Officer must know the case of the petitioners as well as the respondent.

5(c) As per Section 7 of the Act, only the Estate Officer has power to demand rent from a person who is in arrears of rent payable in respect of any public premises. In the present case, the Estate Officer did not demand any rent or did not assess any damages payable by the petitioners. The demand made by Garrison Officer for payment of rent is invalid. The Estate Officer is a quasi judicial authority having power of Civil Court as per Section 8 of the Act. The Estate Officer has to exercise this judicial power and conduct enquiry giving opportunity to the petitioners to let in evidence as well as permit them to cross examine the witnesses of

the respondent. The Estate Officer has to consider that petitioners are earning their livelihood by doing petty business. The Estate Officer must fix a reasonable rent and deposit and when the petitioners comply with the said demand, their license should be renewed. The entire Fort is the property of Army. The Secretariat is permitted to function in the property belonging to Army. Number of persons visit the Secretariat, both when Assembly is in session and when the Assembly is not in session. The persons who visit the Secretariat for their work require taking xerox copies and also canteen facility. The persons who are having only one shop are permitted to continue their livelihood.

6. The learned Senior Counsel appearing for the petitioners in CRP (PD) No.2888 to 2891 of 2014, in support of his contention, relied on the following judgments -

(i) AIR 2008 SC 876(1) [New India Assurance Co. Ltd. v. Nusli Neville Wadia and another]

24. Where an application is filed for eviction of an unauthorized occupant it obligates the Estate Officer to apply his mind so as to enable him to form an opinion that the respondent is a person who has been in unauthorized occupation of the public premises and that he should be evicted. When a notice is issued in terms of [Section 4](#) of the Act, the noticee may show cause. [Section 5](#) of the Act postulates that an order of eviction must be passed only

upon consideration of the show cause and any evidence produced by him in support of its case also upon giving him a personal hearing, if any, as provided under clause (ii) of sub-section 2 of Section 4 of the Act.

25. Although [Section 5](#) ex-facie does not make any classification in regard to the two classes of tenancies but the same is evident from the decisions rendered by this Court as also by the different High Courts.

26. The occupants of public premises may be trespassers, or might have breached the conditions of tenancy, or have been occupying the premises as a condition of service, but were continuing to occupy the premises despite cessation of contract of service.

27. However, there may be another class of tenants who are required to be evicted not on any of the grounds mentioned hereinbefore but inter alia on the ground, which requires proof of the fairness and reasonableness on the part of the landlord which may include requirement for its own use and occupation.

28. Furthermore a proceeding may be initiated under [Section 4](#) simplicitor. A composite proceedings may also be initiated both under [Sections 4](#) and [7](#) of the Act. In the latter category of cases the landlord would be required to establish not only the bona fide need on its part but also quantum of damages to which it may hold to be entitled to, in the event that an order is passed in favour of the establishment.

29. Admittedly in these cases two notices for eviction were issued. If the contention of Mr. Lekhi is correct, the first notice was not required to be withdrawn and the second notice was not required to be issued, specifying the grounds on which the eviction of the respondents were sought for.

30. When an application for eviction is based on such grounds, which require production of positive evidence on part of the landlord, in our opinion, it would be for it to adduce evidence first; more so in a composite application where the evidence is also required to be led on the quantum of damages to be determined by the Estate Officer.

31. There may be a case where the tenant may take a defence which discloses no prima facie case in which event the Estate Officer may ask him to lead evidence. But there may be cases where the ground of eviction, having regard to the defence taken by the occupants, may be required to be gone into.

32. Appellants stand in this case is clear and unambiguous. It intends to evict the respondents on the grounds specified in the notices issued by the Estate officer.

33. The Estate Officer with a view to determine the lis between the parties must record summary of the evidence. Summary of the evidence and the documents shall also form part of the record of the proceedings.

34. Procedure laid down for recording evidence is stated in the Rules. The Estate Officer being a creature of the statute must comply the same. When a notice is issued, the occupant of the public premises would not only be entitled to show cause but would also be entitled to produce evidence in support of the cause shown.

CONCEPT OF FAIRNESS

35. The procedural aspect as to who should lead evidence first, thus may have to be determined on the basis of the issues arising in the matter. When we say so, we do not mean that the procedure involved being a summary one, the issues are required to be specifically framed but that which is the principal issue(s) between the parties must be known to the Estate officer.

36. Thus under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 the occasion would arise for multi-level inquiry: Primary inquiry will be to arrive at a conclusion on unauthorized occupant; and intermediate inquiry would be as to the eviction of unauthorized occupant.

38. The statute, although, does not require a lengthy hearing or a lengthy cross-examination but the noticee should be given an opportunity to file an effective show cause. An effective show cause can be filed when eviction is sought for a specified ground and the occupants must know the particulars in relation thereto.

44. If some facts are to be proved by the landlord, indisputably the occupant should get an opportunity to cross-examine. The witness who intends to prove the said fact has the right to cross-examine the witness. This may not be provided by under the statute, but it being a part of the principle of natural justice should be held to be indefeasible right

45. We may also take note of the fact that this Court in 1972 (1) SCR 241 : Bareilly Electricity Supply Co. Ltd. vs. The Workmen this Court held as under :-

The application of the principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no material can be relied

upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used.

48. Section 5 of the Act, on a plain reading, would place the entire onus upon a noticee. It, in no uncertain terms, states that once a notice under Section 4 is issued by the Estate Officer on formation of his opinion as envisaged therein it is for the noticee not only to show cause in respect thereof but also adduce evidence and make oral submissions in support of his case. Literal meaning in a situation of this nature would lead to a conclusion that the landlord is not required to adduce any evidence at all nor it is required even to make any oral submissions. Such a literal construction would lead to an anomalous situation because the landlord may not be heard at all. It may not even be permitted to adduce any evidence in rebuttal to the one adduced by the noticee nor it would be permitted to advance any argument. Is this contemplated in law? The answer must be rendered in the negative. When a landlord files an application, it in a given situation must be able to lead evidence either at the first instance or after the evidence is led by the noticee to establish its case and/ or in rebuttal to the evidence led by the noticee.

49. The literal interpretation of the statute, if resorted to, would also lead to the situation that it would not be necessary for the landlords in any situation to plead in regard to its need for the public premises. It could just terminate the tenancy without specifying any cause for eviction.

50. Except in the first category of cases, as has been noticed by us hereinbefore, Sections 4 and 5 of the Act, in our opinion, may have to be construed differently in view of the decisions rendered by this Court. If the landlord being a State within the meaning of Article 12 of the Constitution of India is required to prove fairness and reasonableness on its part in initiating a proceeding, it is for it to show how its prayer meets the constitutional requirements of Article 14 of the Constitution of India. For proper interpretation not only the basic principles of natural justice have to be borne in mind, but also principles of constitutionalism involved therein. With a view to read the provisions of the Act in a proper and effective manner, we are of the opinion that literal interpretation, if given, may give rise to an anomaly or absurdity which must be avoided. So as to enable a superior court to interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable

legislator/ author. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act fulfilled; which in turn would lead the beneficiary under the statutory scheme to fulfill its constitutional obligations as held by the court inter alia in Ashoka Marketing Ltd (supra).

(ii) 2016 (3) SCC 582 [Senior Divisional Commercial Manager, South Central Railways and others v. SCR Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and another]

25. Article 14 of the Constitution of India mandates that state action must not be arbitrary and discriminatory. It must also not be guided by any extraneous considerations which are antithetical to equality. A three Judge Bench of this Court in the case of [R.D. Shetty v. International Airport Authority](#)[8] held as under:

“21It must, therefore follow as a necessary corollary from the principle of equality enshrined in [Article 14](#) that though the State is entitled to refuse to enter into relationship with any one, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground.”

32. Keeping in view the evolving concept of social justice, we allow the members of respondents who are the licensees to continue their petty business, especially in the absence of employment potentiality in the country on account of non-governance and non- implementation of the constitutional philosophy of an egalitarian society, which provides the opportunity to all individuals to lead a life of dignity. The right to life with dignity has been interpreted to be a part of right to life by this Court in the case of [Francis Coralie Mullin v. Administrator, Union Territory of Delhi & Ors.](#)[12] , as under:

8. “We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.”

33. Therefore, we have to hold that the provisions of the Catering Policy, 2010 are applicable to the concerned respondents. The action of the railways in not granting renewals of the licenses to the members of the respondents is arbitrary, unreasonable, unfair and discriminatory, and the same cannot be allowed to sustain in law.

7. The learned Senior Counsel appearing for the petitioners in CRP (PD) No.2892 of 2014, in support of his contention, relied on the following judgments.

(i) AIR 1999 MADRAS 222 [B.M.Habibullah v. State of Tamil Nadu]

7..... I am not referring to the other portions of [Section 6](#) of the Act for they are not necessary for the purpose of the present case.

The prior notice to be issued under [Section 7](#) should specify a date before which the person in unauthorised occupation should be asked to show cause as to why he should not be proceeded against. It is obligatory on the part of the authority issuing

notice under Section 7 to specify 'a certain date'. In contra distinction, Section (2) uses the expression "Service of a notice on the person reported to be in occupation requiring him within such time" as the Collector may deem reasonable to vacate the land. Thus, it is clear that prior notice under Section 7 should contain 'a certain date' while a notice under Section 6(2) to specify such time as the Collector or his subordinate may deem reasonable. Thus, the Legislature has deliberately used two different expressions in Sections 7 and 6 of the Act. If a prior notice issued under Section 7 does not contain 'a certain date', it would be in violation of the mandatory requirement of the Section.

7(a) The learned Senior Counsel also relied on the judgment reported in **AIR 2008 SCC 876(1)** cited *supra*, relied on by the learned Senior Counsel appearing for the petitioners in other CRPs.

8. Per contra, the learned Senior Counsel appearing for the respondent contended that the license granted to the petitioners expired on 30.06.2009 and after that period, the license was not renewed further. In such circumstances, the petitioners are unauthorised occupants. The amounts received by the respondent from the petitioners are for the use and occupation, electricity and water charges. That will not amount to receiving rent by the respondent and the petitioners cannot be termed as authorised occupant. The premises under the occupation of the petitioners are required by the respondent for the troops of the Indian Army.

Further, the petition premises is in dilapidated condition and it is not safe for human inhabitation.

8(a) Section 8 of the Act does not confer all the powers of Civil Court on the Estate Officer and all the provisions of CPC are not applicable to the procedures under The Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Only the powers of Civil Court as mentioned in Section 8 are conferred on the Estate Officer. The proceedings under the Act is summary in nature. The Estate Officer can issue notice under Section 4, if he is satisfied that persons are unauthorised occupants of public premises and they should be evicted. The Estate Officer has to comply with the conditions mentioned therein. As per Section 5 of the Act, if a person to whom notice is issued under Section 4 gives explanation, the Estate Officer has to consider the same and give personal hearing, if so required and pass orders. There is no necessity to let in evidence and no necessity to examine and cross-examine the witnesses.

8(b) In the present case, the petitioners have not submitted explanation to the show cause notice. Without submitting any explanation, they filed proof affidavit. In such circumstances, there is no necessity to cross examine the petitioners on proof affidavit.

Non-cross examination based on proof affidavit will not amount to admitting averments in proof affidavit.

8(c) The petitioners, on receipt of notice under Section 4 of the Act, filed suit in O.S.No.5309 of 2009 before the City Civil Court, Chennai challenging the said notice. The authorities filed application under Order VII Rule 11 CPC for rejection of the plaint. The said application was dismissed. The authorities filed CRP No.1532 of 2009 and after obtaining stay, proceeded with enquiry. The petitioners filed writ petitions and this Court upheld the notices issued by the Estate Officer and directed the Estate Officer to pass order, after hearing counsel for the petitioners. As per the order of this Order, the Estate Officer considering the proof affidavits as well as submissions made by the parties, passed orders on merits. This court, in the order passed in the Writ Petitions, did not direct the Estate Officer to record evidence.

8(d) In support of his contention, the learned Senior Counsel for the respondent, relied on the following judgments -

(i) AIR 2006 SC 1734 [Sarup Singh Gupta v. S.Jagdish Singh & Ors.]

7. In the instant case, as we have noticed earlier, two notices to quit were given on 10th February, 1979 and 17th March, 1979. The suit was filed on June 2, 1979. The tenant offered and the landlord accepted the rent for the months of April, May and thereafter. The question is whether this by itself constitute an act on the part of the landlord showing an Intention to treat the lease as subsisting. In our view, mere acceptance of rent did not by itself constituted an act of the nature envisaged by Section 113, Transfer of Property Act showing an Intention to treat the lease as subsisting. The fact remains that even after accepting the rent tendered, the landlord did file a suit for eviction, and even while prosecuting the suit accepted rent which was being paid to him by the tenant. It cannot, therefore, be said that by accepting rent, he intended to waive the notice to quit and to treat the lease as subsisting. We cannot ignore the fact that in any event, even if rent was neither tendered nor accepted, the landlord in the event of success would be entitled to the payment of the arrears of rent. To avoid any controversy, in the event of termination of lease the practice followed by courts is to permit the landlord to receive each month by way of compensation for the use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. It cannot, therefore, be said that mere acceptance of rent amounts to waiver of notice to quit unless there be any other evidence to prove or establish that the landlord so Intended. In the instant case, we find no other fact or circumstance to support the plea of waiver. On the contrary the filing of and prosecution of the eviction proceeding by the landlord suggests otherwise.

(ii) 2006 (1) LW 521 [C.Albert Morris v. K.Chandrasekaran and Ors.]

14. We are, therefore, of the opinion that mere acceptance of rent by the landlord-Ist respondent herein from the tenant in possession after the lease has been determined either by efflux of time or by notice to

quit would not create a tenancy so as to confer the erstwhile tenant the status of a tenant or a right to be in possession. We answer this issue accordingly.

(iii) 2000 (III) CTC 565 [General Merchant Association v. Corporation of Chennai]

42. Mere renewal of trading licence and remittance of licence fee under [Section 365](#) of the Act will not confer a right on the petitioners/appellants to carry on the business as the licence had been validly terminated. The licence and permission to carry on the trade is distinct and separate from the trade licence granted by the Corporation in respect of the stalls. Where an individual is permitted to exhibit or offer or vend commodities which licence has been terminated, the renewal of trading licence, if any will not confer a right on the petitioners/appellants nor it could be stated that the petitioners/appellants have got the right or authorisation to continue the privilege of vending the stalls. Further stray incidents of certain alteration or putting up of shutters or getting separate phone connection or continuance as licensees for number of years will not change the situation or status as the licensee once inducted shall continue to be a licensee unless the licensor and licensee by an overt act or by certain instruments or document change their position or status to that of an lessor and lessee or confer an irrevocable right or interest on the immovable property. This is not the case here and no such case has been put forward by any of the petitioners/appellants.

(iv) MANU/DE/0024/1978 [Chandu Lal v. Municipal Corporation of Delhi]

35. Shri Saigal next contended that on revocation of the license, the petitioners possession of the Kiosks was that of trespasser and having accepted license fee subsequent to the revocation of the license, the Corporation acquiesced in the possession of the petitioners as trespassers, in the circumstances the Corporation has no right to dispossess the petitioners by

force. This submission is equally devoid of force. In accepting license fee subsequent to the revocation of the license, all that can be said is that the license was extended up to the period of the license fee was accepted but it cannot be said that the Corporation in any manner acquiesced in the alleged or that the petitioners came to acquire "settled possession". The basic fallacy in this argument is the assumption that on acquiring liberty to occupy the Kiosk possession of it was passed to the petitioners. The petitioners being licensees legal possession all along remained with the Corporation. That being so, as held by the Supreme Court in Munshi Ram v. Delhi Administration Air 1968 Sc 702, the Corporation had a right to reenter the premises and reinstate itself provided it does not use more force than necessary. Such an entry would be received only as a resistance to an intrusion upon possession which had never been lost. Further, the law does not require a person whose property is forcibly tried to be occupied by trespassers to run away and seek the protection authorities, there being degrading to the human the face being of the nothing more spirit than to run away in peril.

9. Heard the learned Senior Counsel for the petitioners as well as respondent and perused the materials available on record.

10. Points for consideration in these two Civil Revision Petitions are -

(i) whether the demand, payment and acceptance of rent after license period will make a person in occupation of public premises as authorised occupant or not ?

(ii) whether the proceedings under Section 5 of the Public Premises Act is summary in nature or whether the Estate Officer has to act as a Civil Judge under Section 8 of the Act and conduct a trial as per CPC while deciding the issue.

Point No.1 :

10(a) The petitioners are in occupation of the petition premises belonging to the Army. They were given license to run the business in the portion allotted to them. The license was renewed every year. On 30.06.1999, the license expired and subsequently, the same was not renewed. On intimation by the authorities, the Estate Officer issued notice to the petitioners on 09.09.2009 calling upon the petitioners as to why they should not be evicted from the petition premises as they are unauthorised occupants. The petitioners filed O.S.No.5309 of 2009 on the file of XVIII Asst. Judge, City Civil Court, Chennai. The respondent filed application to reject the plaint. The said application was dismissed. The respondent filed CRP No.1532 of 2009 and this court, by order dated 20.04.2011 granted stay. The respondent issued notice dated 27.05.2011 under Section 4(2) (b) (ii) of the Act and posted for hearing on 03.06.2011. Before the respondent, the petitioners sought time to vacate the premises but the respondent refused to

grant time and by order dated 03.06.2011, ordered eviction.

10(b) The petitioners filed WP Nos.13131, 13134 to 13137 of 2011 before this Court challenging the said order dated 03.06.2011. This court, by order dated 31.07.2012 upheld the notice issued by the respondent and directed the respondent to refix the date of hearing and appearance of parties and pass orders within six weeks thereafter. The respondent, after hearing the parties, on 10.09.2012 ordered eviction of the petitioners from petition premises. Again, the petitioners challenged the said order by filing WP Nos.25454, 25464 to 25467 of 2012 on the ground that they were not heard as their counsel died and no advocate appeared on their behalf. This court, by order dated 24.09.2012 set aside the order of eviction dated 10.09.2012 and directed the petitioners to appear before the respondent on 28.09.2012 at 2.00 p.m and advance their arguments. On 05.11.2012, the respondent heard the arguments and at request, adjournment was also given to the petitioners and finally eviction order was passed under Section 5(1) of the Act. Against the said order, the petitioners preferred statutory appeal CMA Nos.106 to 110 of 2012 which were dismissed by the learned Appellate Judge by order dated 21.07.2014.

11. Against the said common judgment dated 21.07.2014 made in CMA Nos.106 to 110 of 2012 confirming the order passed by the respondent herein in proceedings No.4022/XXV/[Part], Veerasamy/1/Q3 Land, No.4022/Bunk XXXIII/Vani/5/Q3 Land, No.4022/XXV(King's BK) Kannan/2/Q3 Land, No.4022/Bunk XXXIII-5/Hanifa/6/Q3 Land and No.4022/XXV/King's Bk/sivagnanam/3/Q3 Land, all dated 05.11.2012, the present Civil Revision Petitions are filed by the petitioners.

12. All the facts are elaborately referred to by me for better appreciation of the issues involved in this Civil Revision Petitions.

12(a) It is not in dispute that the premises under occupation of the petitioners are public premises. It is also not disputed that the petitioners are licensees of the respective portions. After expiry of the license on 30.06.1999, the lease was not renewed. In such circumstances, the respondent claim that petitioners are unauthorised occupants on the ground that the license was not renewed. On the other hand, the petitioners contend that rent was demanded from them by the authorised officer (garrison officer) and they have paid the rent. Having accepted the rent, the authorities are estopped from contending that petitioners are unauthorised

occupants. To decide the issue, Section 2 (2) (g) and 2(2) (f) of the Act are relevant. The said sections read as follows -

Section 2 (2) (g) of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

“unauthorised occupation”, in relation to any public premises means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.”

Section 2 (2) (f) of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

“rent” in relation to any public premises, means the consideration payable periodically for the authorised occupation of the premises, and includes -

(i) any charge for electricity, water or any other service in connection with the occupation of the premises,

(ii) any tax (by whatever name called) payable in respect of the premises, where such charge or tax is payable by the Central Government or the

(statutory authority);

12(b) As per Section 2(2)(g) of the Act, a person becomes unauthorised occupant when the license expires and was not renewed. In the present case, license expired on 30.06.1999 and it was not extended or renewed. In such circumstances, the petitioners are unauthorised occupants. The contention of the learned Senior Counsel for the petitioners that the petitioners have paid the rent and therefore they are authorised occupants is without merits. The definition of rent in Section 2(2)(f) of the Act makes it clear that rent means consideration payable periodically for the authorised occupation of the premises. When an unauthorised occupation pays any amount, it cannot be termed as rent and occupant do not become authorised occupant. This issue was considered by a Division Bench of this Court in the judgment reported in **2000 (III) CTC 565** referred supra. In the said judgment, in Para 42, the Division Bench of this Court has held that mere payment of license fee will not make an unauthorised occupant as authorised occupant. The said judgment is squarely applicable to the facts of the present case and payment of amounts by the petitioners cannot be termed as rent and the petitioners do not become authorised occupants. The other judgments relied on

by the learned counsel for the respondent are also squarely applicable to the facts of the present case.

12(c) It is pertinent to note that the petitioners have not paid the rent upto date. There are arrears of rent payable by them. The learned counsel for the respondent filed memo of calculation furnishing the details of amount in arrears by the petitioners. The learned Senior Counsel appearing for the petitioners disputed the quantum mentioned in the memo of calculation but they have not disputed the contention of the learned Senior Counsel for the respondent that the petitioners are in arrears of rent payable by them. Another fact to be taken into consideration is that the learned Senior Counsel for the petitioners contended that only the respondent i.e. Estate Officer has power to demand rent or damages for use and occupation as per Section 7 of the Act. They further contended that Estate Officer has not demanded any rent or damages for use and occupation from the petitioners. The demand made by the Garrison Officer is invalid. The petitioners are not entitled to take contradictory stand. In view of the stand taken by the learned Senior Counsel for the petitioners, the demand made by Garrison Officer is invalid. Any amount paid by them cannot be termed as payment of rent for authorised occupation. In view of

the judgment relied on by the learned counsel for the respondent, it is clear that any amount paid by an unauthorised occupant by occupation of public premises by claiming that they paid rent, do not become authorised occupants.

Point No.2 :

13. The Public Premises Act is a Special Act enacted with a view to evict unauthorised occupants of public premises without any delay. The said Act is self-contained Act containing definitions as well as procedures to be followed in deciding the issue. Necessary rules are also framed. An Estate Officer is appointed to decide the issue and pass orders on merits. The owner of the public premises has to make a request to the Estate Officer appointed under the Act for eviction of unauthorised occupants. The Estate Officer has to consider such request and if he is of the opinion that any person is in unauthorised occupation of any public premises, has to issue notice under section 4 (1) of the Act calling upon such a person to show cause as to why an order of eviction should not be made against him. The Estate Officer, in the notice should specify the grounds on which the order of eviction is proposed to be made, to specify the date not earlier than seven days from the date of notice, to submit his explanation to appear before the Estate Officer and

produce all the materials in support of his objection. The Estate Officer must also give a personal hearing, if so requested by the person to whom notice under Section 4(1) of the Act was issued. In addition to that, as per Section 4(3) of the Act, the Estate Officer must cause such notice to be affixed on the outer door or some other conspicuous part of the public premises. If occupant submits his explanation and requires a personal hearing, the Estate Officer must consider the explanation submitted by the occupant and also hear the occupant and pass orders on merits.

13(a) A reading of Section 5 and Rule 5 of the Act reveals that the procedures contemplated under Section 5 and Rule 5 of the Act are only a summary procedures. As per Rule 5 (2), the Estate Officer shall record summary of the evidence tendered before him and such evidence alongwith relevant documents produced by the occupant shall form part of the records of the proceedings. As per Section 8 of the Act, Estate Officer has limited powers of a Civil Court under CPC. As per Section 8(a), 8(b) and 8 (c) of the Act, the Estate Officer has power of Civil Court under CPC mentioned therein. Apart from such powers conferred as per Section 8, the Estate Officer has no power of Civil Court. The occupant has right to let in evidence and owner has the right to cross examine the

witnesses, if any, produced by the occupant.

13(b) The Hon'ble Apex Court in the judgment reported in **AIR 2008 SC 876(1)** cited *supra*, in Para 28 held that notice issued by Estate Officer under Section 4 either will be notice simplicitor or composite notice. When the notice contains reasons for requirement of owners or reasons for eviction, the owner has to prove bonafide need on its part and also the quantum of damages to which he may be entitled. In para 30 of the said judgment, it is held that it is for the owner to let in evidence first and substantiate their bonafide requirement. In Para 38, it is held that there is no necessity for a lengthy hearing or a lengthy cross examination but the occupant should be given an opportunity to put forth his objection in an effective manner.

13(c) In the present case, admittedly, after expiry of license period i.e. with effect from 30.06.1999, license was not extended by the authority. As per definition of Section 2(2)(g) of the Act, the petitioners are unauthorised occupants. The Estate Officer has issued notice under Section 4 (1) of the Act . The said notice is not Show Cause Notice simplicitor. The present notices issued by the respondent contains reason for eviction. It is not notice simplicitor

but it is composite notice, as per the judgment of the Hon'ble Apex Court referred to above. Only in case of notice simplicitor, it is for the occupant to submit explanation and produce evidence to show that he is not liable to be evicted and that he is not unauthorised occupant. The Estate Officer can pass orders recording the summary of evidence and after giving personal hearing, if sought for. In the notice issued on 09.09.2009, the respondent has stated that the petition premises is unsafe for human inhabitation and called upon the petitioners to show cause as to why they should not be evicted. Again on 25.08.2011, the respondent issued another notice calling upon the petitioners to show cause as to why they should not be evicted as the petition premises is required for use of Indian Army Troop. The Estate Officer has specified the reason for eviction of the petitioners. In such circumstances, as per the judgment of the Hon'ble Apex Court reported in **AIR 2008 SC 876(1)** cited supra, relied on by the learned Senior Counsel for the petitioners, the owner has to let in evidence to substantiate their claim for possession of the petition premises and eviction of the petitioners.

13(d) Applying the principles laid down by the Hon'ble Apex Court in the judgment referred to above, the judgment of the learned Appellate Authority as well as the order of the respondent viz. Estate Officer are liable to be set aside and they are accordingly set aside. Therefore, the matter is remanded back to the respondent for *denovo* enquiry on merits. It is open to the Estate Officer to consider the present case of the authorities as well as non-renewal of the license and to proceed with the enquiry based on the notices issued earlier. It is open to the respondent to withdraw the earlier notices containing reasons for evicting the petitioners and issue fresh show cause notice simplicitor and proceed further under Section 5 of the Act.

13(e) The learned Senior Counsel for the petitioners submitted that the petitioners are willing to pay the admitted arrears. It is open to the petitioners to pay the arrears and owners are directed to receive the same, without any prejudice to their right to take proceedings for eviction. The learned Senior Counsel for the petitioners contended that in the present case, Garrison Officer demanded rent and other charges payable by the petitioners. As per such demand, petitioners paid the rent. The Estate Officer

did not demand any rent or damages for use and occupation by the petitioners. The Garrison Officer has power to demand rent only from authorised occupant. The Estate Officer has power to demand rent or damages from unauthorised occupants as per Section 7 of the Act.

13(f) The learned Senior Counsel for the petitioners have contended that only the Estate Officer has power to call upon the petitioners to pay the amount or fix the damages and call upon the petitioners to pay the said sum together with interest as per Section 7 of the Act. In view of such stand taken by the petitioners, it is open to the Estate Officer to exercise his power under Section 7 of the Act and call upon the petitioners to pay the amounts due to the owner.

14. With the above directions, all the Civil Revision Petitions are allowed and remitted back to the Estate Officer for fresh consideration.

11.04.2018

Index: Yes
Speaking/Non-speaking order
rgr

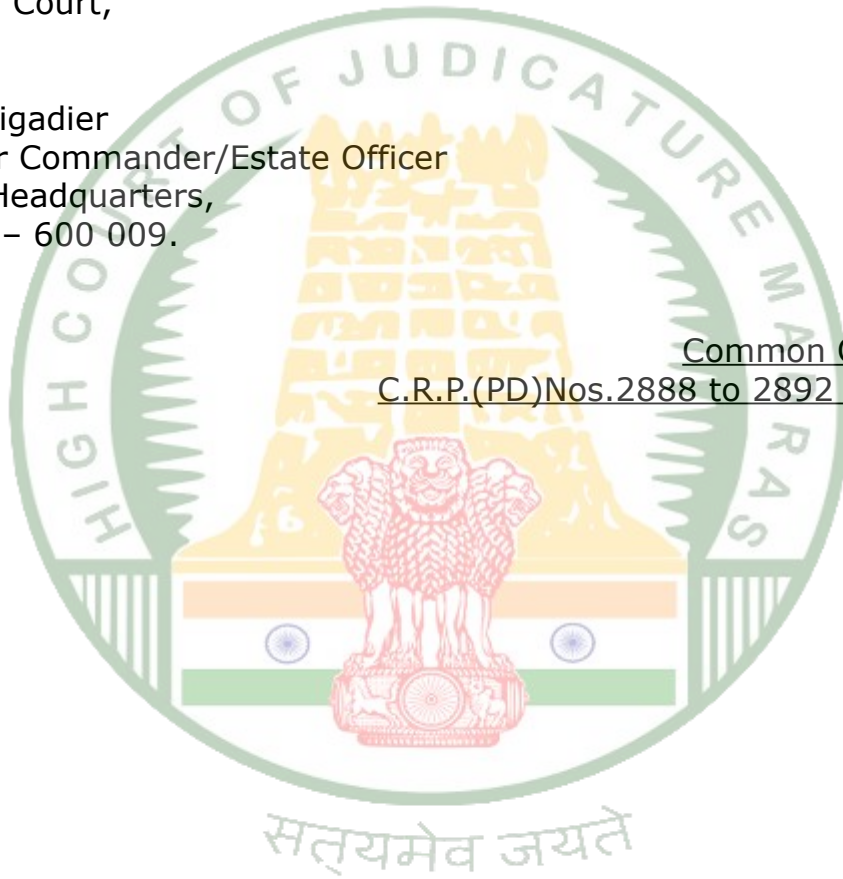
V.M.VELUMANI, J.

rgr

To

1. The Principal Judge,
City Civil Court,
Chennai.

2.The Brigadier
Stationer Commander/Estate Officer
Station Headquarters,
Chennai – 600 009.



Common Order in
C.R.P.(PD)Nos.2888 to 2892 of 2014

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