

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14025 of 2014
and
M.P.No.1 of 2014

R.Radhakrishnan

..Petitioner

..Vs..

1.Neyveli Lignite Corporation Limited,
Represented by its Chief General Manager,
Township Administration,
Neyveli.

2.Estate Officer/ATA/Eviction Authority,
Township Administration,
Neyveli Lignite Corporation Limited,
Neyveli.

3.M.Ramalingam,
Assistant Township Administrator,
Township Administration,
Neyveli.

4.R.Ramesh.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the second respondent relating to the Order in Form-A dated the 12th May 2014 relating to NRB: 13, Daily Market, Block-19, Neyveli-3 bearing Party Code: R 40193, quash the same.

For Petitioner : Mr.P.S.Venkatasubramanian

For Respondents : Mr.S.Nithiananadam
for R-1 to R3
No Appearance for R-4

O R D E R

The Show Cause Notice issued by the Estate Officer under Section 4 of the Public Premises [Eviction of Unauthorised Occupants) Act, 1971, is under challenge in this writ petition.

2.The learned counsel appearing on behalf of the writ petitioner states that one Shri.A.Nithiyaraj is the original licensee in respect of the shop in question. The said Shri.A.Nithiyaraj subsequently consented for transfer, and accordingly, the transfer was effected in the name of the writ petitioner, and also in the name of his son who is the 4th respondent in the present writ petition. Thus, the writ petitioner as well as the 4th respondent is in lawful occupation of the premises, and therefore, no action can be taken against them.

3.The learned counsel for the writ petitioner further states that the Chief General Manager, Township Administration issued proceeding dated 17.03.2014 cancelling the license granted in favour of Shri.A.Nithiyaraj, and the order was not communicated to the writ petitioner. This apart, the very same authority who signed the said order dated 17.03.2014, has issued the impugned Show Cause Notice under Section 4 of the Public Premises [Eviction of Unauthorised Occupants) Act, 1971. Therefore, he cannot sit as a judge in the case against the writ petitioner. Further, it is contended that the writ petitioner cannot be considered as an unauthorised occupant in view of the fact that the original licensee transferred his rights in favour of the writ petitioner, and in favour of the 4th respondent.

4.The learned counsel for the petitioner further states that the transfer was made with the consent of the Corporation, and further the amount paid by the writ petitioner on behalf of the original licensee Shri.A.Nithiyaraj had been accepted. Even in proceeding dated 17.03.2014, the remittance of the charges by the writ petitioner and the 4th respondent was admitted by the Corporation. Such being the case, the writ petitioner cannot be treated as unauthorised occupant. Thus, the very initiation of proceedings under Section 4 of the Public Premises [Eviction of Unauthorised Occupants) Act, 1971, is untenable.

5.The learned counsel appearing on behalf of the respondents opposed the contentions raised on behalf of the writ petitioner by stating that the writ petitioner is not a licensee at all. The license was granted in favour of one Shri.A.Nithiyaraj, and he has not followed the terms and conditions of the license, and therefore, in proceeding dated 17.03.2014, license granted in favour of the said Shri.A.Nithiyaraj was cancelled. Further, it was found that the

writ petitioner and the 4th respondent were in occupation of the premises, and therefore, the authorities found such occupation cannot be permitted nor allowed to be continued by taking decision under the provisions of the Act.

6.The respondents issued the Show Cause Notice seeking explanation from the writ petitioner as well as the original licensee Shri.A..Nithiyaraj. When it is found that the original licensee had transferred the rights in favour of some other person, it is necessary to issue notice to all the persons who are in occupation. Thus, the Authorities Competent issued Show Cause Notice to all the persons including the transferee. When the license granted was cancelled, then all the persons, who are in occupation ought to be treated as unauthorised occupants under the provisions of Act. Thus, it is not as if the original licensee can transfer the right in favour of the 3rd respondent, and the 3rd respondent shall be allowed to continue in the premises. The very purport of the Act is to ensure that the unauthorised occupants are evicted in accordance with the provisions of the Act. This, being the very purpose and object of the Act, the writ petitioner cannot take a stand that they had recognised the license transferred in favour of the writ petitioner and the 4th respondent.

7.This Court is of an opinion that the original order of cancellation of license was issued by the authority on 17.03.2014. When the license itself was cancelled, which was granted in favour of Shri.A.Nithiyaraj-the transferee cannot hold any valid license. When the license is granted in respect of the particular premises, then it should be construed that all the persons, who all are in occupation of the said premises are the unauthorised occupants. Thus, there is no infirmity in respect of invoking the provisions of the Act by the Competent Authorities.

8.Section 2(b) defines "estate officer" himself an Officer appointed as such by the Central Government under Section 3; Under Section 2(e) defines "public premises" and Section 2(g) defines "unauthorised occupation", in relation to any public premises, means occupation by any person of the public premises without authority for such occupation, and includes the continuance in by any person of the 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.

9. Thus, on cancellation of the valid license by the Competent Authority then the persons who are in possession of the said public premises ought to be treated as unauthorised occupants under the provisions of Act. In the present case on

hand, the license granted in favour of the original licensee Shri.A.Nithiyaraj was cancelled by the Competent Authority. Therefore, all other persons in the said premises ought to be treated as unauthorised occupants in the absence of establishing that such persons are holding valid license issued by the Competent Authority.

10. Section 3 of the Act provides "appointment of estate officers" Section 4 deals with the issue of notice to show cause against the order of eviction. Section 4 reads as follows:

"If the estate officer is of opinion that any person are in unauthorised occupation of any officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made".

11. Section 5 denotes "Eviction of unauthorised occupants, and Section 8 deals with the "power of the estate officers".

It is pertinent to note that Section 9 Act deals with appeals reads as follows:

"An appeal shall lie from every order of the estate officer made in respect of any public premises under [section 5 or section 5B][or section 5C]] or section 7 to an appellate officer who shall be the district judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years' standing as the district judge may designate in this behalf".

12. In respect of the present writ petition, the show cause notice issued under Section 4 of the Act is under challenge. The process of eviction is only set in motion by issuing the Show Cause Notice. Thus, the same should reach finality in accordance with the provisions contemplated under the Act. In this view of the matter, the writ petition is certainly premature. Even after passing of the order by the Estate Officer under the provisions of the Act, the writ petitioner has to exhaust the remedy of appeal provided under Section 9 of the Public Premises [Eviction of Unauthorised Occupants] Act, 1971. Without exhausting the remedy available, no writ petition can be filed. No writ petition can be filed against Show Cause Notice in a routine manner. Judicial review against the Show Cause Notice is certainly limited. Show cause notice can be challenged, if the same has been issued by an incompetent

authority having no jurisdiction or allegation of malafides are raised or if the same is in violation of the Statutory Rules in force. Even in case of raising malafides, the authority against whom such an allegation is raised should be mpleaded as party respondent in the writ petition proceedings. In the absence of any of these legal grounds, no writ proceedings can be entertained in a routine manner.

13.In the present case on hand, the learned counsel for the writ petitioner states that the impugned Show Cause Notice was issued by an Officer, who issued the proceeding dated 17.03.2014, cancelling the license granted in favour of one Shri.A.Nithiyaraj. The learned counsel appearing on behalf of the respondents states that the said Officer has appointed as an Estate Officer under the provisions of the Act. Therefore, the same cannot be questioned by the writ petitioner.

This apart, all these points shall be urged before the Estate Officer during the adjudication under the provisions of the Act.

14.This Court is also of an opinion that the Estate Officer is functioning as a quasi judicial authority under the Act. The quasi judicial authority is competent to adjudicate all the facts and circumstances including the legal grounds raised by the parties concerned. Thus, it is left open to the writ petitioner to submit his explanations/objections in respect of the Show Cause Notice issued to him, within a period of four weeks, and thereafter, the Competent Authority/Estate Officer shall adjudicate the issues by providing opportunity to all the parties concerned and thereafter, pass orders on merits, and in accordance with law.

15.In this view of the matter, the present writ petition filed challenging the Show Cause Notice cannot be entertained, and accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

//True copy//

Sub Assistant Registrar

KP

To

- 1.The Chief General Manager,
Neyveli Lignite Corporation Limited,
Township Administration,
Neyveli.
- 2.Estate Officer/ATA/Eviction Authority,
Township Administration,
Neyveli Lignite Corporation Limited,
Neyveli.
- 3.The Assistant Township Administrator,
Township Administration,
Neyveli.

+lcc to Mr.P.S.Venkatasubramaniam, Advocate SR.No.30232
+lcc to Mr.N.Nithanandam, Advocate SR.No.30768

W.P.No.14025 of 2014

SSI (CO)
GN(17/05/2018)



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