

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.07.2018
CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
W.P.No.33014 of 2015
M.P.No.1 of 2015
and
W.M.P.Nos.31507 of 2016 & 20524 of 2018

The Alda Fowler Nursery School Trust,
Rep. By its Trustee Mrs.G.Chandraleka,
V.O.Chidambaram Park,
Coimbatore - 641 018.

.. Petitioner

Vs.

- 1.The Principal Secretary to Government,
Municipal Administration and Water
Supply (M.C.II) Department,
Secretariat, Chennai - 600 009.
- 2.The Director of Municipal Administration,
Chepauk, Chennai - 600 005.
- 3.The Commissioner,
Coimbatore Corporation,
Coimbatore - 641 001.

...Respondents

PRAYER: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent herein in respect of the Letter No.24108/MC.II/2009-31, dated 30.09.2015 of Municipal Administration and Water Supply (MC.II) Department, Secretariat, Chennai - 9, quash the same with the consequential direction to the respondents herein to renew the lease of land to the petitioner Trust on similar terms and conditions applicable to the similar lessee's of the adjacent premises, which are under the possession and enjoyment of similar lessees such as Ladies Club, City Club and Officers' Club.

For Petitioner: Mrs.Chitra Sampath, Senior Counsel
for Mr.C.V.Vijayakumar

For Respondents: Mr.M.Elumalai for R1 and R2
Mr.V.Ayyadurai, Senior Counsel
for Mr.K.Magesh for R3

O R D E R

The order of rejection issued by the 1st respondent in letter No. 24108/MC.II/2009-31, dated 30.09.2015 issued by the 1st respondent is in challenge in this Writ Petition.

2. The learned Senior Counsel appearing on behalf of the Writ Petitioner made an application that the order impugned passed by the 1st respondent in proceedings dated 30.09.2015 is in violation of the earlier orders passed by this Court in W.P.No.8232 and 8233 of 2001 dated 25.03.2011. This Court has directed the respondent to provide a personal hearing to the Writ Petitioner before taking decision and opportunity to defend their case also to be provided. However, the personal hearing was not granted by the 1st respondent before taking the decision nor the reasonable opportunity meant in the order passed by this Court was given to the petitioner enabling them to defend their case.

3. The learned Senior Counsel has stated that the Writ Petitioner is the lessee and the lease was executed in the year 1964 for a period of 20 years. The lease admittedly expired in the year 1984. However, the Writ Petitioner was allowed to continue based on the litigations which were pending before the Civil Court as well as certain representations and appeals submitted by the Writ Petitioner to the Governmental Authorities. During the pendency of the Civil Suit and during the pendency of the appeals or representations filed before the Authorities, the writ petitioner has been allowed to continue in the premises even after the expiry of lease period from the year 1984.

4. However, it is stated that the Coimbatore Corporation itself is not the owner of the property and the property vest with the Charitable Endowment and the 3rd respondent is only an administrator of the property which is in question in the present Writ Petition. Being the administrator, the 3rd respondent has got a limited powers to evict the writ petitioner. The 3rd respondent cannot evict the writ petitioner without proper sanctioning order from the Government, therefore the writ petitioner cannot be evicted by the 3rd respondent.

5. It is contended that as per the lease agreement, the petitioner is liable to pay the lease rent of Rs.1/- (Rupees one only) per annum and the writ petitioner was paying the same continuously. This apart, pursuant to the interim order passed by this Court in the present writ petition, the writ petitioner had deposited Rs.2,14,000/- (Rupees Two Lakhs and Fourteen Thousand only) with the 3rd respondent towards rent.

6. The learned Senior Counsel appearing on behalf of the 3rd respondent strenuously opposed the contentions raised on behalf of the writ petitioner by stating that the Writ Petition itself is not maintainable, the petitioner is only a lessee and the petitioner cannot travel beyond the scope of the lease deed in their capacity as a lessee. They are no way connected with the Charitable Endowment or the administration of the property in question.

7. Admittedly, the 3rd respondent Coimbatore Corporation is an administrator of the property, which belongs to the Charitable Endowment and the lease deed was executed by the Coimbatore Corporation with the writ petitioner. The lease period expired in the year 1984. Thereafter, the writ petitioner has no right to continue in the property at all. It is contended that the writ petitioner by filing a civil suit and preferring representations and appeals before the Authorities are continuing illegally in the premises without any valid permission. The writ petitioner has not paid the lease amount of Rs.1 per annum for the past many years, and the enhanced rent also has not been paid.

8. However, the learned Senior Counsel was of the opinion that there was no enhancement of lease amount in view of the fact that the 3rd respondent initiated action for eviction. Therefore, they have not enhanced the rent at all. The 3rd respondent intended to evict the writ petitioner therefore they have not taken any steps to revise the lease amount or otherwise.

9. This apart the 3rd respondent had initiated action for eviction in the year 1987 onwards on account of the pendency of the civil suit and on account of various representations and appeals before the Government. The 3rd respondent was unable to proceed with the eviction process and the writ petitioner is unlawfully continuing in the premises for the past more than 30 years.

10. Continuance of the writ petitioner in the premises itself is illegal in view of the fact that the writ petitioner is no more a lessee nor authorized by the administrator or other competent Authorities to continue in the premises therefore, the writ petitioner is to be treated as an encroacher for all purposes and administrator is empowered to invoke the provisions under the Tamil Nadu Land Encroachment Act, 1905.

11. The learned Senior Counsel appearing on behalf of the writ petitioner by way of reply contended that the lease amount of Rs.1 per annum was being paid by the writ petitioner. This apart, the writ petitioner had already deposited Rs.21,00,000/-,

pursuant to the orders passed by this Court, therefore, it is not the case as if the writ petitioner has not paid the lease amount. Further, the opportunity of personal hearing and to defend the case was not provided in accordance with the direction provided by this Court. Therefore, the case has to be remanded back for the purpose of rehearing by the 1st respondent.

12. The parties to the lis on hand, raised various factual disputes including the nature of the property and about the Charitable Endowments and also the power of an administrator namely, the Coimbatore Corporation. However, this Court cannot go into those factual aspects nor such complex facts and circumstances can be adjudicated in a writ proceedings. However, it is an admitted fact that a lease deed was executed by the third respondent in the year 1964, in favour of the writ petitioner and the period of lease was twenty years and the same expired in the year 1984 itself. This being the factum of the case, the other factual details regarding the nature of the property and the terms and conditions of the Endowment Trust need not be gone into the present writ petition. This apart, those factors are certainly irrelevant in respect of the writ petitioner as a lessee.

13. As per the impugned order, the 1st respondent states that the writ petitioner school is functioning with 68 children, 4 teachers and 6 other staff, at 3,436 sq.ft building in the 16355 sq.ft of Corporation land. The Commissioner has also stated that the Trust has constructed a new building in their own land at Adis Street, which is 300-350 meters from the present school premises and is running a Nursery School. The new school building has sufficient space for the students of petitioner school. Thus the Trust can shift their students into their own school premises. This apart the Commissioner, Coimbatore Corporation has said that there is no District Branch Library in the Centre of City, as the existing branch library which was functioning next to the Officers Club building has been converted as a Special Court after the 1998 Bomb blasts. Therefore, the Coimbatore Corporation has proposed to construct a library in the above said land for the benefit of the public of that locality. This being the policy decision taken by the 1st respondent, to provide public library facility for the people of that locality that should be given paramount importance. The Writ Petitioner school is a private school and they are having own building adjacent to the land which is in dispute now and therefore they can very well run the school in their own premises which is also situated very nearby to the present location.

14. It is the prerogative of the writ petitioner to constitute and administer a School. However, it is brought to

the notice of this Court that the writ petitioner is already possessing a building in the nearby area. Though the fact regarding the possession of an own building is disputed by the petitioner, this Court is of an opinion that it is for the writ petitioner to run the School in the premises of their choice. However, for the purpose of continuing the School in the present premises administered by the Coimbatore Corporation, this Court is of an opinion that the writ petitioner has to establish a legal right. It is a pre-condition that a person, who has approached a Writ Court, should establish his legal right. In the absence of any legal right, no writ petition can be entertained.

15. The fact remains that the lease deed executed between the parties expired in the year 1984 and the writ petitioner is continuing in the lease premises for the past thirty four years without any sanction or authority. The petitioner is continuing in the premises by developing litigations and by submitting frequent representations and appeals to the authorities. Under these circumstances, no further leniency can be shown to the writ petitioner for the further continuance in the premises administered by the Coimbatore Corporation and therefore, the writ petitioner is liable to shift the School as per their own convenience and it is for them to take a decision in respect of running the School or the premises.

16. Considering the submissions made, the writ petitioner has not established a semblance of legal right for further continuance in the premises described in the writ petition. Thus, there is no infirmity as such in respect of the impugned order passed.

17. Since the lease period expired, the writ petitioner is to be treated as an unauthorized occupant of the land administered by the Coimbatore Corporation. Admittedly, the third respondent Corporation is the Administrator of the land. Therefore, the writ petitioner is estop from going into the Charitable Endowment and the terms and conditions therein. The writ petitioner, being an unlawful occupant of the land administered by the Coimbatore Corporation, the petitioner has no right to continue in the land in question. Thus, the writ petitioner is liable to be evicted and the respondents are liable to evict the writ petitioner without any further lapse of time.

18. The respondents have proposed to utilize the land for public purposes. Thus, the writ petitioner has no option, but to vacate the premises and handover the possession to the third respondent Corporation.

19. In this view of the matter, the respondents are directed to evict the petitioner from the premises occupied by the writ petitioner within a period of eight weeks from the date of receipt of a copy of this order. The respondents are further directed to calculate the arrears of lease amount to be paid by the writ petitioner and initiate appropriate action for recovery of all such arrears of rent by issuing show cause notice and by following procedures in accordance with law.

20. The writ petitioner is not entitled for any relief and accordingly, the writ petitioner stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

dsa/kak

To

1. The Principal Secretary to Government,
Municipal Administration and Water
Supply (M.C.II) Department,
Secretariat, Chennai - 600 009.
2. The Director of Municipal Administration,
Chepauk, Chennai - 600 005.
3. The Commissioner,
Coimbatore Corporation,
Coimbatore - 641 001.

+1cc to Mr.K.Magesh, Advocate SR.No.51741

+1cc to Mr.C.V.Vijaya Kumar, Advocate SR.No.51630

W.P.No.33014 of 2015

GN(21/08/2018)