

IN THE JUDICATE OF MADRAS HIGH COURT

Reserved on : 07.03.2018
Delivered on : 16.03.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No.1937 of 2018

Selva Rajendran @ Selvam

..Petitioner

Vs.

1.The Managing Director,
Chennai Metro Rail Limited,
Koyambedu,
Chennai-600 107.

2.The District Revenue Officer /
Legal Officer (I/C),
Chennai Metro Rail Limited,
Koyambedu,
Chennai-600 107.

3.J.Nooruddin

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari calling for the records relating to the eviction notice issued by the 2nd respondent under Lettr Rc.52/08/LND/CMRL dated 19.01.2018 and to quash the same.

For Petitioner : Mr.V.Prakash, Senior Counsel for
M/s.M.Kamalanathan

For Respondents: Mr.Jayesh Dolia for R1 & R2
Mr.Syed Mustafa and Mr.A.S.Bharathi, for R3

ORDER

(R. SUBBIAH, J.)

This Writ Petition is filed seeking to quash the eviction notice issued by the 2nd respondent vide Letter Rc.52/82/LND/CMRL, dated 19.01.2018.

2.The brief facts of the case of the petitioner, which are necessary to dispose of this writ petition, are as follows_

2-1Originally one Mohamed Nynar was running an ice factory at Door No.3, T.H.Road, New Washermanpet, Chennai-600 081 under the name and style of 3 Acres Ice Factory and the said premises is belonging to one Mumtaz Begum, who is the mother of the 3rd respondent herein. The said Mohamed Nynar was a tenant under the said Mumtaz Begum. The factory premises is measuring about 2400 sq.ft. During the year 2004, the said Mohamed Nynar approached the petitioner herein and expressed that due to his old age, he was unable to run the ice factory and as such, he offered to sell the same to the petitioner. The petitioner purchased the said ice factory from the said Mohamed Nynar, who arranged to get the tenancy attorned in favour of the petitioner from the said Mumtaz Begum. Thus, the petitioner became a tenant under the said Mumtaz Begum, as early as in the year 2004. Thereafter, with the consent of the said Mumtaz Begum, the licence for running the Ice Factory was transferred in his name from the Corporation of Chennai. Likewise, he also obtained Registration Certificate under the TNGST and CST. The petitioner is also having electricity supply for his factory in his name.

2-2.While so, the 3rd respondent herein, who is the son of the landlady Mumtaz Begum, filed an eviction petition in R.C.O.P.No.1018 of 2007 on the file of the XIII Small Causes Court, Chennai, against the previous tenant Mohammed Nynar and the petitioner herein for eviction on various grounds. In the said eviction petition, the 3rd respondent herein described the petitioner herein as the sub-tenant under the said Mohammed Nynar. After due contest, the said eviction petition was dismissed in respect of the grounds under Sections 10(2)(iii), 10(2)(iv), 10(2)(v) and 10(3)(c) of the Act; however, an order of eviction was passed on the grounds under Sections 10(2)(i) and 10(2)(ii)(a) of the Act. Against the said eviction order, on 14.10.2017 the petitioner herein filed an appeal in R.C.A.No.695 of 2017 on the file of the learned IX Judge, Small Causes Court, Chennai and an interim order of status quo was granted by the appellate authority in favour of the petitioner herein and the said appeal is still pending.

2-3.In this situation, the 3rd respondent has caused a legal notice to the petitioner herein on 22.09.2017 stating that the property has been acquired for construction of Chennai Metro Rail Station and informed the petitioner to vacate the premises, for which the petitioner has sent a suitable reply through his counsel on 03.10.2017 and a copy of the same was also sent to the 1st respondent herein. Though the 1st respondent had received the said notice, they have not sent any reply for the same.

2-4.While so, on 11.10.2017 and 19.10.2017, the officials of from the 1st respondent's office came to the

petitioner's ice factory and told him that he should vacate the premises as the property has been acquired for Chennai Metro Rail Scheme. When the petitioner asked the official to show the notification, they evaded to show the same to the petitioner. Therefore, the petitioner presumed that there was no such notification for acquisition of the subject property at all. The officials were acting at the behest of the 3rd respondent to evict the petitioner at any rate, except due process of law. The officials of the 1st respondent have not served on the petitioner any notice under Section 21(1) of the Metro Railways (Construction and works) Act, or any proceedings of the alleged acquisition. Therefore, the petitioner caused a legal notice on 20.10.2017 to the office of the 1st respondent herein setting out the above facts, and called upon to desist from interfering from evicting and enjoyment of his peaceful possession and running of the ice factory in the subject premises except due process of law. Though the 1st respondent has received the above said notice, the officials were continuing their threats to evict the petitioner from the above said premises. The 3rd respondent is only inducing the officials of the 1st respondent to evict the petitioner from the premises without following the due process of law.

2-5. In fact, the petitioner informed the officials of the 1st respondent that he has been running the ice factory for the past 13 years in the said premises and if he is suddenly evicted, he will be put to irreparable loss, hardship and difficulties. Earlier, apprehending any unlawful eviction, the petitioner was constrained to file a writ petition against the 1st respondent before this Court in W.P.No.27472 of 2017 seeking to forbear the 1st respondent, its officials, servants, or any person claiming through the 1st respondent, from interfering with his possession except due process of law. The 3rd respondent, who is the son of the landlady Mumtaz Begum, had subsequently filed a petition to implead him as a party in the said writ petition and the said implead petition was allowed as the petitioner herein expressed no objection for impleadment. When the said writ petition came up for hearing before a learned Single Judge of this Court, the 1st respondent represented that they would proceed under Section 21 of the Metro Railways (Construction and works) Act. After hearing both sides, the said writ petition was disposed of by the learned Single Judge of this court by recording the said statement made by the 1st respondent. But, inspite of the said statement made by the 1st respondent before this Court in W.P.No.27472 of 2017 that they will proceed under Section 21 of the Metro Railways (Construction and works) Act, on 08.01.2018 again some of the officials from the 1st respondent came and threatened the petitioner to vacate the premises. Hence, the petitioner issued a notice through his counsel on the same day i.e, 08.01.2018 and the 1st respondent received the notice on 09.01.2018 and the 3rd

respondent had received the notice on 11.01.2018.

2-6.While so, on 09.01.2018 at about 11.30 am, the officials of the 1st respondent along with more than 20 workmen came and started demolishing a portion of the premises under the occupation of the 3rd respondent, which is situated in the front side portion of the petitioner's ice factory. At that time, the petitioner told the officials that as per the order of the High Court, the 1st respondent has to proceed only under Section 21 of the Metro Railways (Construction and works) Act; thereafter, the officials assured that they will not demolish his building. However, on 10.01.2018 in the early morning at about 3.00 am, the respondents started to demolish the petitioner's portion also, despite his objections and showing the orders passed by the learned Single Judge of this Court in the above said writ petition. Thereafter, the officials gave instructions to their staff that since ammonia gas is in ice factory, no further demolition should take place. The officials of the 1st respondent colluded along with the 3rd respondent and started demolition of a portion of his ice factory. Therefore, on 10.01.2018 the petitioner lodged a complaint before the Inspector of Police, H5, New Washermenpet Police Station and the Police told that they will enquire into the matter. Meanwhile, again on 12.01.2018 at about 11.30 am, the officials of the 1st respondent came with police force headed by the Assistant Commissioner of Police, North Chennai and attempted to demolish the premises. At that time, the petitioner told the officials that it is a clear act of contempt of court order, therefore, the petitioner will be constrained to file contempt petition against them. Only thereafter the officials of the 1st respondent spoke with their hierarchy in their head office and stopped the demolition work. The Police also went away as the 1st respondent had suppressed the factum of order passed by the learned Single Judge of this Court. It is obvious that the officials of the 1st respondent colluded with the 3rd respondent and demolished a portion of the petitioner's ice factory, which is a clear act of contempt. Because of the illegal demolition of the premises, the petitioner has incurred a heavy loss to the tune of Rs.40 lakhs. Thereafter, on 13.01.2018, the Inspector of Police, H-5, New Washermenpet Police Station, Chennai, issued CSR on the petitioner's complaint dated 10.01.2018. The 3rd respondent had only instigated the officials of the 1st respondent and demolished a portion of the ice factory and as such, he is also liable to be punished for the contempt of court. Therefore, it is palpable that the 1st respondent and their officials have committed wilful and deliberate disobedience of the order of this Court in W.P.No.27472 of 2017.

2-7.Thereafter, the 2nd respondent has issued a notice dated 19.01.2018 under Section 21 of the Metro Railways (Construction and works) Act, directing the petitioner to vacate

the premises on or before 09.02.2018 failing which, appropriate suitable action will be taken against the petitioner for recovery of possession. It is stated by the petitioner that Section 21(1) of the Metro Railways (Construction and works) Act contemplates that the notification has to be issued in the Central Government Official Gazette and thereafter, to provide alternative accommodation for the person in possession at free of cost or to pay cost of procuring an alternative accommodation. In the instant case, no such publication has been made in official gazette by the respondents 1 & 2 herein. Further, no alternative accommodation or cost for accommodation has been provided. Therefore, on 25.01.2018, the petitioner had sent an explanation to the above notice dated 19.01.2018 to the respondents 1 to 2 requesting them to comply strictly with the provisions of law and to defer further action of demolition in pursuance of the above notice. Though the respondents 1 & 3 have received the petitioner's objection/explanation, they have not sent any reply. On the other hand, the officials of the 2nd respondent have been frequently threatening the petitioner that if he does not vacate the premises, they will forcibly evict the petitioner from the premises without any further notice. Hence, the petitioner has filed the present writ petition seeking to quash the impugned eviction notice dated 19.01.2018.

3. When the matter is taken up for consideration, the learned senior counsel appearing for the petitioner mainly focused his submission with regard to the non-compliance of the provisions under Section 21(1) of the Metro Railways (Construction and works) Act. In this regard, the learned Senior Counsel for the petitioner submitted that the 1st respondent had given undertaking before the learned Single Judge of this Court in W.P.No.27472 of 2017 that they will follow the provisions of Section 21 of the Metro Railways (Construction and works) Act before evicting the petitioner from the premises. In the instant case, as per Section 21(1) of the Metro Railways (Construction and works) Act, no publication in the Central Government official Gazette was issued. Further, no alternative accommodation or cost for accommodation has been provided. Therefore, according to the learned senior counsel for the petitioner, the impugned eviction notice is liable to be quashed.

4. But, by way of reply, the learned counsel for the Official respondents iv., R1 & R2, by filing detailed counter, submitted that the Chennai Metro Railways Limited (in short 'CMRL') has been formed for special purpose of implementing the Chennai Metro Rail Project. The project is being funded by the Government of India and the State Government by way of equal equity contribution. Further, the Metro Rail Act is a Central Act and through a special notification, it is made applicable to various Metro cities such as Kochin, Chennai etc. There is no

separate state legislation as far as the State of Tamil Nadu is concerned. The contention of the petitioner that notification should be issued in the Central Government gazette as per Section 21(1) of the Metro Railways (Construction and works) Act, is unsustainable since the central government is nowhere in the picture when it comes to land acquisition and project work. The State Government is the acquiring body and CMRL is the beneficiary. The State Government in its Gazette has already notified the land that is to be acquired for the public purpose of Metro Rail Project. The State Government has published the notification vide Notification No.II(2)/PDSI/337(b-8)2016, in Tamil Nadu Government Gazette on 24.05.2016, in respect of acquiring the lands for the purpose of forming of Metro Station, in which the subject land in the present writ petition viz., Block No.78, R.S.No.4059/2, (New R.S.No.4059/24) measuring 2369 sq.ft was also mentioned. As such, there is no need to publish the same in the Central Government Gazette.

5.The learned counsel for the official respondents has also submitted that in almost all the cases, where the Metro work is to be undertaken, CMRL will require temporary extents of lands adjoining the permanent extent for various purposes such as requiring working space for men and machinery, space due to alteration in the original plan, station work, supporting structures etc. Further, the petitioner is not the owner of the land and he is only a tenant. CMRL spends lakhs of rupees every day for the metro rail works, but they are unable to commence work due to the court proceedings. If CMRL is made to wait for taking possession of the land, it results in enormous delay and it has a cascading effect and loss to the exchequer and general public. The project is carried on at full swing and the same is a time bound project. Thus, the learned counsel for the official respondents sought for dismissal of the writ petition.

6.By way of reply, the learned senior counsel for the petitioner submitted that though the entire extent of 2369 sq.ft land was sought to be acquired as per the Notification issued under Section 3(1) of the Tamil Nadu Acquisition of Land for Industrial Purposes Act 1997, the CMRL had restricted the acquisition only to 315 sq.ft out of 2,369 sq.ft and took possession of the said 315 sq.ft. Therefore, the above said Notification had automatically ceased to operate against the remaining land, which is under the occupation of the petitioner. Further, the CMRL could not invoke Notification as per the Memorandum of Understanding entered with the petitioner's landlord, in which it was agreed that the landlord should handover possession for temporary use in respect of the remaining portion, which is under the occupation of the petitioner. As per the Memorandum of Understanding, the

landlord shall have to give possession of the lands to the CMRL for their temporary use as the Notification was given effect only to 315 sq.ft., under the occupation of the 3rd respondent. Therefore, the CMRL has to proceed only under Section 21 of the Metro Railways (Construction and works) Act, against the petitioner regarding their need for temporary use. That apart, as per Section 3(3) of the Tamil Nadu Acquisition of Land for Industrial Purposes Act 1997, before publishing a Notice under Section (1), the Government shall call upon the owner and any other person, whom in the opinion of the government may be interested in such lands, to show cause within such time, as may be specified in the notice, why the lands should not be acquired. In the instant case, no such notice was issued to the petitioner, who is in possession of the land.

7. Further, the learned senior counsel for the petitioner, by inviting the attention of this Court to Section 4(2) of the said Act, submitted that the Government may direct any person, who may be in possession of the lands, to surrender or deliver possession thereof to the Collector or any person duly authorized by him in this behalf within 30 days of the service of the order. As per Section 4(3), if any person refuses or fails to comply with the order under Sub-Section (2), the Collector may take possession of the lands, and may for that purpose use such force as may be necessary. In the instant case, no such possession was taken from the petitioner by the Collector. Therefore, the submission made by the learned counsel for the official respondents based on the Notification issued under Section 3 of the TN Land Acquisition Act is liable to be rejected. Thus, the learned senior counsel for the petitioner sought for quashing the impugned orders.

8. The learned counsel for the 3rd respondent/landlord submitted that the petitioner is only a tenant under his mother Mumtaz Begum. By virtue of a Settlement Deed dated 11.12.2006 registered as Doc.No.3637 of 2006 before the Sub-Registrar Office at Royapuram between the 3rd respondent and his mother Mumtaz Begum, 3rd respondent became the landlord of the subject premises situated at No.3, Tondiarpet High Court, New Washermenpet, Chennai. Originally, the ice factory was run by one Nynar Mohamed in the said premises as a tenant and subsequently, the said Ice factory was purchased by the petitioner herein. As the said premises is required by the 3rd respondent for additional accommodation, he filed an eviction petition in R.C.O.P.No.1018 of 2007 and eviction was ordered. Aggrieved over the same, the petitioner herein has preferred an appeal and the same is still pending before the Rent Control Appellate Authority. The petitioner and his erstwhile employer Nynar Mohamed had been running the Ice Factory in the subject premises without any consent from the Tamil Nadu Pollution

Control Board. The Tamil Nadu Pollution Control Board has also issued notice to the petitioner directing closure of the petitioner's unit. While so, CMRL has notified the subject premises for the purpose of CMRL works and it has entered into an agreement dated 25.09.2017 with the 3rd respondent/landlord. As per the said agreement, out of the total total extent of 2369 sq.ft, a portion measuring 315 sq.ft shall be utilised by CMRL permanently and an extent of 2600 sq.ft shall be utilised temporarily for project work till its completion. The petitioner, who is a tenant, has filed the present writ petition on the untenable grounds. Thus, the learned counsel for the 3rd respondent/landlord sought for dismissal of the writ petition.

9.Keeping the submissions made on either side, We have carefully gone through the materials available on record.

10.Though very many contentions have been raised by the learned counsel on either on the factual aspect, the only question that falls for consideration in this writ petition is

Whether the impugned eviction notice dated 19.01.2018 issued by the 2nd respondent under Section 21 of the Metro Rail Construction Act is liable to be quashed since the Central Government gazette did not notify the acquisition of the land? If answer is given to the above question, that would suffice to dispose of this writ petition. Hence, We are not dealing with the other factual aspects in this case.

11.According to the learned Senior counsel appearing for the petitioner, it is the case of the petitioner that in earlier Writ Petition in W.P.No.27472 of 2017 filed by the petitioner herein seeking to forbear the respondents from evicting the petitioner from the subject premises, the 1st respondent had given an undertaking that they will proceed only under Section 21 of the Metro Rail Construction Act. But, without complying with the undertaking given by the 1st respondent, on 09.01.2018 the officials of the 1st respondent along with more than 20 persons came to the premises and started demolishing the portion of the premises. On the objection raised by the petitioner, the demolition work was stop. Thereafter, the impugned notice dated 19.01.2018 has been issued by the respondent under Section 21 of the Act. According to the learned senior counsel for the petitioner, Section 21 of the Act contemplates that notification has to be issued in Central Government Gazette and thereafter, alternative accommodation or cost for procuring an alternative accommodation has to be provided to the person, who is evicted from the premises. But, in the instant case, no such publication was issued in the Central Government Gazette. Therefore, the impugned eviction notice is not legally valid.

12. But, from the materials available on record, We find that so far as the acquisition of the subject land is concerned, the State Government is the acquiring body and CMRL is the beneficiary. Therefore, the acquisition has to be carried out only by the State Government and not by the Central Government. It is seen from the materials available on record that in the instant case, the State Government has already notified the land that is to be acquired for the Metro Rail Project, in its Gazette dated 24.05.2016, acquiring the subject land also, under Section 3 of the Tamil Nadu Acquisition of Land for Industrial Purposes Act 1997. This notification was published even much earlier to the order passed by the learned Single Judge in W.P.No.27472 of 2017 dated 07.12.2017. But, this notification was not challenged by the petitioner till date. Further, it is seen that when the said writ petition came up before the learned Single Judge, based on the representation made by the learned counsel for the 1st respondent, the learned Single Judge has given liberty to the CMRL to resort to the proceedings as contemplated under Section 21 of the Metro Railways (Construction and works) Act. Accordingly, the impugned notice was issued to the petitioner by the 2nd respondent only for the purpose of evicting the petitioner from the premises. Now, it is the submission of the learned senior counsel for the petitioner that as per Section 21 of the Metro Railways (Construction and works) Act, notification has to be published in the Central Government Gazette. But, We are of the opinion that when the acquisition has to be done by the State Government, the question of publishing the notification in the Central Government Gazette under Section 21 of the Act does not arise in this case.

13. Further, in all the cases where the metro work is to be undertaken, CMRL will require temporary extents of lands adjoining the permanent extent, for various purposes such as requiring working space for men and machinery, space due to alteration in the original plan, station work, supporting structures etc., That is why, the notification was issued in the Tamil Nadu State Government Gazette to acquire the lands including the subject land in this writ petition. As long as the said notification is not challenged by the petitioner, the submission made by the learned counsel for the petitioner relying upon Section 21 of the Metro Railways (Construction and works) Act, has no signification in this case.

14. Further more, the petitioner is only a tenant and he cannot have better right than the landlord. In the instant case the landlord himself has entered into an agreement with CMRL for handing over the land for using the same by the CMRL for temporary purpose. When such being the case, We do not find any merit in the case projected by the petitioner in this writ petition, warranting to quash the impugned eviction notice

issued by the 2nd respondent. The writ petition lacks merits and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

Today, after the pronouncement of the order dismissing the writ petition, it is represented by the learned counsel for the petitioner that the petitioner has to remove the machineries from the premises. Thus, he sought for time to vacate the premises. Considering the request made by the learned counsel for the petitioner, time is granted to the petitioner till 28.03.2018 to vacate the premises.

Sd/-

Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

(ssv)

To,

1.The Managing Director,
Chennai Metro Rail Limited,
Koyambedu,
Chennai-600 107.

2.The District Revenue Officer /
Legal Officer (I/C),
Chennai Metro Rail Limited,
Koyambedu,
Chennai-600 107.

+1cc to Mr.M.Kamalanathan, Advocate SR.No.19977

+1cc to Mr.R.Syed Mustafa, Advocate SR.No.19816

W.P. No.1937 of 2018

RR (CO)
GN (22/03/2018)

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