

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 08.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P. No.26279 of 2018

Royal Madras Yacht Club
Spring Haven Wharf The Harbour Chennai
Rep. by its Honorary Secretary
Mr.K.Chidambaram

... Petitioner

Vs

1 The State of Tamil Nadu
Rep. by its Secretary, P.W.D.
Fort St. George, Chennai

2 The Assistant Executive Engineer
Public Works Department
Land Encroachment Cooum River Division
Chepauk, Chennai

3 The Tahsildar
Fort- Tondiarpet Taluk Chennai

... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari calling for the records culminating in the notice of the 2nd respondent dated 28.09.2018 and quash the same

For petitioner : Mr.AR.L.Sundaresan, Senior Counsel,
for Ms.M.Vidya

For Respondents : Mr.R.Udaya Kumar,
Additional Government Pleader,

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O R D E R
(made by K.K.SASIDHARAN, J.)

The second respondent initiated action for eviction, pursuant to the liberty granted by the Hon'ble Supreme Court vide order dated 22 August 2005 in SLP No.16827 of 2005. The eviction order is under challenge on the ground that the representation submitted for considering the question of renewal of the lease is still pending with the Government.

The facts:-

2. The Government of Tamil Nadu allotted large extent of land to the petitioner as per order in G.O.Ms.No.1827, Public Works Department, dated 28 November 1973. The lease was for a period of 25 years. The petitioner after the expiry of the original period of lease, submitted an application for renewal. The third respondent vide order dated 4 October 2002, offered to allot alternate land to the petitioner in S.No.1803, Vepery Village. The same was not agreeable to the petitioner. There were civil as well as writ proceedings initiated by the petitioner against the respondents.

3. The Government passed an order in G.O.Ms.No.20, Public Works Department, dated 18 January 2005 indicating that the land in question is required for a public purpose. The said order was challenged by the petitioner before the writ court in W.P.No.8360 of 2005. The Writ Petition was disposed of with an observation that it is open to the respondents to proceed in accordance with the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975. The said order dated 30 June 2005 was taken up in appeal before the Division Bench in W.A.No.1488 of 2005. The Division Bench while dismissing the intra court appeal, recorded the direction given by the learned Single Judge to proceed against the petitioner under the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975. The judgment dated 3 August 2005 was taken up before the Hon'ble Supreme Court in SLP No.16827 of 2005. The Hon'ble Supreme Court taking into account the observation made by the High Court that the petitioner would be dispossessed only in accordance with the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975, disposed of the Special Leave Petition.

4. The second respondent pursuant to the liberty granted in W.P.No.8360 of 2005, initiated proceedings for eviction. The petitioner was given reasonable time to submit the objection. In the meantime, the petitioner filed a Writ Petition in W.P.No.40905 of 2005 to restrain the second respondent from taking action under the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975. The Writ Petition was referred to the Lok Adalat. The learned Additional Government Pleader made a submission before the Lok Adalat that in case a representation is given, the same would be considered by the Government. The Writ Petition was therefore dismissed as withdrawn with liberty to submit a fresh representation. The eviction notice dated 28 September 2018 is under challenge only on the ground that it would not be proper on the part of the second respondent to evict the petitioner during the currency of the application for renewal.

Submissions:-

5. The learned senior counsel for the petitioner contended that the petitioner has been in possession and enjoyment of the land ever since the original date of lease on 28 November 1973. The petitioner has been undertaking various sporting activities by making use of the allotted land. The learned Senior counsel contended that the possession of the petitioner should be protected till a decision is taken by the Government in the representation submitted for renewal of lease.

6. The learned Additional Government Pleader appearing on behalf of the respondent submitted that there was no such representation submitted by the petitioner. In view of the said contention, we have directed the learned Additional Government Pleader to take instruction from the Government as to whether any representation is pending and as to whether the Government is agreeable for renewal of the lease. The matter was adjourned for taking instruction.

7. When the Writ Petition was taken up for hearing today, the learned Additional Government Pleader on instruction from the respondents submitted that no such representation for renewal of lease is pending with the Government. According to the learned Additional Government Pleader, the then Additional Government Pleader made a concession before the Lok Adalat agreeing to consider the representation for renewal without taking instruction from the Government. The learned Additional Government Pleader submitted that the Government is in need of the land for allotment to Coast Guard and as such, it would not be possible to renew the lease.

Analysis:-

8. The lease granted to the petitioner expired long back. The present proceedings initiated by the second respondent for eviction was pursuant to the liberty granted by the High Court, which was confirmed by the Hon'ble Supreme Court. The second respondent passed the impugned order after giving reasonable opportunity to the petitioner.

9. Since the Government made it clear that there is no question of renewal of lease, as the land is required for Coast Guard, the learned Senior counsel submitted that the petitioner should be permitted to file an appeal before the Appellate Authority under the Land Encroachment Act.

10. The order impugned in this Writ Petition is amenable to the appellate jurisdiction. We therefore grant liberty to the petitioner to file an appeal before the appropriate Appellate Authority. In case any such appeal is filed within a period of fifteen days from the date of receipt of a copy of this order,

the same shall be considered and disposed of by the Appellate Authority on merits and as per law. Such exercise shall be completed within a period of four weeks from the date of receipt of the appeal memorandum. In case no such appeal is filed within the time stipulated by this Court, the second respondent is at liberty to proceed in accordance with law.

11. The Writ Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

- 1 The Secretary,
Public Works Department
Fort St. George, Chennai
- 2 The Assistant Executive Engineer
Public Works Department
Land Encroachment Cooum River Division
Chepauk, Chennai
- 3 The Tahsildar
Fort- Tondiarpet Taluk Chennai

+1cc to Ms.M.Vidya, Advocate, S.R.No.69236

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W.P.No.26279 of 2018

GJII(CO)
CS/25/10/2018

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