

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 18th DAY OF DECEMBER 2018

THE HON'BLE MR. JUSTICE K.KALYANASUNDARAM

A.No.9913 of 2018

in

C.S.No.726 of 2018

Life Insurance Corporation of India
Represented by its Secretary (Estates)
153, 10th Floor
Zonal Office, LIC Building
Anna Salai, Chennai 600 002.

...Plaintiff

-Vs-

1.South Zone LIC Backward Classes
Employees' Federation
Rep.by its president
No.153, 10th Floor
Zonal Office, LIC Building
Anna Salai, Chennai 600 002.

2.A.Yoganathan
President
South Zone LIC Backward Classes
Employees' Federation
No.153, 10th Floor
Zonal Office, LIC Building
Anna Salai, Chennai 600 002.

...Defendants

A.No.9913 of 2018:

1.South Zone LIC Backward Classes
Employees' Federation
Rep.by its president
No.153, 10th Floor
Zonal Office, LIC Building
Anna Salai, Chennai 600 002.

2.A.Yoganathan
President
South Zone LIC Backward Classes

Employees' Federation
 No.153, 10th Floor
 Zonal Office, LIC Building
 Anna Salai, Chennai 600 002.

...Applicants/Defendants

-Vs-

Life Insurance Corporation of India
 Represented by its Secretary (Estates)
 153, 10th Floor
 Zonal Office, LIC Building
 Anna Salai, Chennai 600 002.

...Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased to reject the Plaint in C.S.No.726 of 2018 on the file of this Hon'ble Court.

This application coming on this day before this court for hearing, the court made the following order:

This application has been filed under Order 7 Rule11 of CPC to reject the plaint.

2. The suit C.S.No.726 of 2018 has been filed by the respondent-Life Insurance Corporation of India against the applicants/defendants for permanent injunction restraining the defendants from in any way interfering with the peaceful possession and enjoyment of the Suit Schedule A & B mentioned properties by the plaintiff.

3. The case of the plaintiff is that they are the owners of the suit properties and one Ms.Jayasudha, Advocate was allotted B-Schedule property having an extent

of 462 sq.ft., vide allotment order dated 10.09.2018. She has also paid security deposit of Rs.1,77,408/- and the registration process for the lease deed is yet to be completed. While so, on 13.09.2018, the President and the Secretary of the first defendant affixed a banner of the defendant Association on the outer wall of Room No.5. Thereafter, on 24.10.2018 at about 4.15 pm, members of the defendant Association tried to trespass into the B-Schedule property by damaging latches of the main door of the room by breaking open its lock. Immediately, a complaint was given to B-2, Esplanade Police Station. During negotiation, the members of the first defendant and their men have given an ultimatum that the plaintiff should cancel the allotment made in favour of the Advocate Ms. Jayasudha and allot the room to the defendant Association, otherwise, they will re-enter into the B-Schedule premises and take possession of it.

4. The defendants have come up with this application to strike off the plaint mainly on the ground that in view of the bar contained in Section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act [hereinafter called as Act], the suit is not maintainable. According to the applicants, the suit properties come under the purview

of the said Act. Hence, the Estate Officer is the only authority to order eviction.

5. Heard Ms.Kanimozhi Mathi, learned counsel for the applicants and Mr.B.Mohan, learned counsel for the respondent and perused the materials available on record.

6. The learned counsel for the applicants would vehemently contend that the B-Schedule property is under occupation of the defendants and even it was unauthorisedly occupied by the applicants, the remedy of the respondent / plaintiff is only to go before the Estate Officer and under the guise of filing the suit for permanent injunction, the jurisdiction of the Civil Court cannot be invoked.

7. It is further submitted that in the complaint dated 24.10.2018, the respondent / plaintiff had categorically admitted that the members of the applicant Association had already occupied the suit B-Schedule property and in the negotiation before the Police, the respondent had illegally / unlawfully evicted the applicants and hence they should be deemed to have been in possession of the B-Schedule property. It is further added that the report of the learned Advocate Commissioner shows that the properties of the applicants are still in the B-Schedule property and when the other Associations have office in the same floor, in a vindictive and

discriminatory manner action is being taken only against the applicant Association.

8. Per contra, the learned counsel for the respondent / plaintiff would submit that the suit has not been instituted for recovery of possession and hence the provisions of the said Act have no any application, especially Section 15 of the Act.

9. It is the contention of the learned counsel for the respondent that admittedly, on the date of the suit, the applicants were not in possession of the suit property and the averments made in the plaint alone are to be considered and the case of the defendants is not required to be looked into at this juncture. According to the learned counsel, the 'B' Schedule property was illegally trespassed by the members of the first defendant and after Police complaint, they have voluntarily vacated and in view of the threat given by the Association, the suit has been filed.

10. In the instant case, it is not the case of the applicants that 'B' schedule property was allotted in favour of the defendants and when the order was in force, unlawful dispossession was done by the respondent / plaintiff. It is settled law that there cannot be equality in illegality and if the other Associations / Labour Unions

have illegally occupied a portion of the suit properties, it has to be remedied by taking appropriate action and hence, I find no merit in the contention of the applicant.

11. Perusal of the averments in the plaint would show that the suit has been filed for permanent injunction and there is no prayer for recovery of possession. It is averred in the plaint that pursuant to the police complaint, the members of the applicant Association came out of the premises. At this juncture, it is to be noted that the averments made in the plaint alone have to be taken into consideration and the allegations and counter allegations of illegal occupation by the members of the applicants, illegal dispossession by the respondents cannot be considered and the findings on those issues can be given only after analysing the evidence adduced by the parties. Therefore, in my view, the bar in Section 15 of the Public Premises Act is not applicable and it cannot be invoked to reject the plaint.

12. The well settled position is that while considering the application under Order VII, Rule 11 CPC, Court is not required to take into consideration the defence set up by the defendant in his written statement or other documents. The question whether plaint discloses any

cause of action and whether it is barred by any law is to be decided by looking at the averments contained in the plaint itself and not the defence set up in the written statement. While considering the application, the strength or weakness of the case of the plaintiff is not to be examined. Plaint cannot be rejected on the basis of the allegations made in written statement or in an application for rejection of the plaint. This position has been consistently reiterated by the Hon'ble Supreme Court and this Court in the decisions referred infra:-

i) **2008 10 SCC 97 (Abdul Gafur v. State of Uttarakhand),**

ii) **AIR 2011 Mad 136 (N.Ravindran v. Ramachandran), and**

iii) **AIR 2003 SC 759 (Saleem Bhai v. State of Maharashtra)**

13. In the light of the above facts and the principles laid down in the decisions, in my considered view, I find no merit in the application. In the result, the application is dismissed.

14. Post the suit on 04.01.2019.

Sd/M.K.K.S.J.

18.12.2018

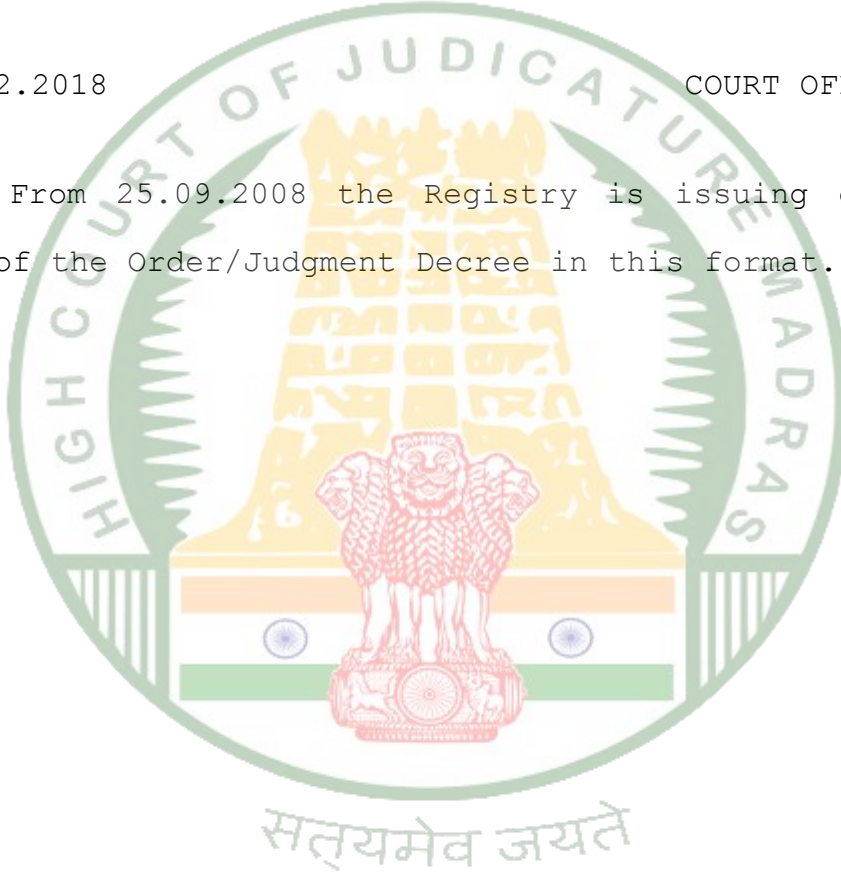
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Dated this the th day of 2018.

DL/21.12.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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