

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.6560, 6562, 6563 of 2019

Three Star Air Tech

Represented by its Proprietor Subramanian

S/o Ramapillai

Having Office at No.3/88

Teleflo Mini Industrial Estate

Mount-Poonamallee Road

Ramapuram, Chennai-89

.. Petitioner in WP 6560 of 2019

M.Arul

.. Petitioner in WP 6562 of 2019

R.Ramasamy

.. Petitioner in WP 6563 of 2019

-vs-

1. The State of Tamil Nadu

Rep. by its Secretary to Government

Department of Revenue

Fort St.George

Chennai 600 009

2. The Special Commissioner and

Commissioner of Urban Land

Ceiling and Urban Land Tax

Chepauk

Chennai 600 005

3. The Assistant Commissioner

Mylapore (Urban Land Ceiling)

345, Arcot Road

Kodambakkam

Chennai 600 024

4. The Assistant Commissioner

(Urban Land Ceiling)

Door No.153, Karunegar Street

Opp.to IOB Building

Adambakkam

Chennai 600 089

5. K.Radhalakshmi

.. Respondents 1 to 5 in all W.P's

6. K.Ramesh Boopathy .. Respondent No.6 in WP 6560

6.K.Bala Boopathy .. Respondent No.6 in WP 6562/19

Petitions under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondent Nos.1 to 4 to take effective steps to restrain the fifth respondent from collecting the rents for the Shed bearing No.RM-12 / RM-Kr-10 / B-5, Teleflo Mini Industrial Estate situate in the land measuring an extent of 1000 sq.ft. / 300 sq.ft. / 300 sq.ft., respectively, being part of the land measuring an extent of 4,131.598 sq.mts in 151/1B, Ramavaram Village, Mount Poonamalle, Chennai 600 089 which was declared as excess vacant land in the hands of the fifth respondent under the Urban Land Ceiling Act and vested in the State Government even in the year 1983 and collect the rent for the said shed from the respective petitioner from November 2018 onwards and consequently take steps to recover the rent for the months June 2008 to October 2018 deposited by the petitioner for the above mentioned shed to the credit of S.A.No.892 / 677 / 678 of 2016 from the fifth respondent.

For Petitioners :: Mrs.Nalini Chidambaram
Senior Counsel for
Ms.C.Uma

For Respondents :: Mr.K.Ravikumar
Additional Government Pleader
for R1 to 4

ORDER

Three writ petitions have been filed with an identical prayer seeking issuance of a mandamus under Article 226 of the Constitution of India to the respondent Nos.1 to 4 to take effective steps to restrain the fifth respondent from collecting the rents for the Shed bearing No.RM-12 / RM-Kr-10 / B-5, Teleflo Mini Industrial Estate situate in the land measuring an extent of 1000 sq.ft. / 300 sq.ft. / 300 sq.ft., respectively, being part of the land measuring an extent of 4,131.598 sq.mts at No.3/88 in 151/1B, Mount Poonamallee Road, Ramavaram Village, Chennai 600 089 which was declared as excess vacant land in the hands of the fifth respondent under the Urban Land Ceiling Act and vested in the State Government even in the year 1983 and collect the rent for the said shed from the respective petitioner from November 2018 onwards and consequently take steps to recover the rent for the months June 2008 to October 2018 deposited by the petitioner for the above mentioned shed to the credit of S.A.No.892 / 677 / 678 of 2016 from the fifth respondent.

2. Mrs.Nalini Chidambaram, learned Senior Counsel for the petitioners submitted that the petitioners became lessees in respect of the Shed bearing No.RM-12 / RM-Kr-10 / B-5, Teleflo Mini Industrial Estate situate in the land measuring an extent of 1000 sq.ft./ 300 sq.ft./ 300 sq.ft., respectively, being part of the land measuring an extent of 4,131.598 sq.mts in 151/1B, Ramavaram Village, Mount Poonamalle, Chennai on a monthly rent of Rs.5,850/- / Rs.3,255/- Rs.2,080/- in the year 2004 / 2006 / 2005. At the time of entering into the said lease agreement, the petitioners were unaware of the fact that the fifth respondent was not the owner of the land on which the industrial sheds were put up, because the said land was declared as excess from the hands of the fifth respondent and subsequently vested with the State Government. Therefore, the fifth respondent was an encroacher. However, on 9.6.2008 / 12.2.2010 / 9.6.2008, the fifth/sixth respondent caused a legal notice by terminating the tenancy of the shed(s) in which the petitioners were tenants with effect from 30.6.2008. Thereupon the petitioners were called upon to handover the vacant possession on 1.7.2008. A detailed reply was given to the said legal notice by the petitioners also and thereafter the fifth respondent filed a suit in O.S.No.238 of 2008 / 108 of 2010 / 36 of 2009 on the file of the Subordinate Court, Poonamalle for recovery of vacant possession of the suit land, which is the Shed bearing No.RM-12 / RM-Kr-10 / B-5, Teleflo Mini Industrial Estate measuring an extent of 1000 sq.ft. / 300 sq.ft. / 300 sq.ft., respectively, being part of the land measuring an extent of 4,131.598 sq.mts at No.3/88 in 151/1B, Mount Poonamalle Road, Ramavaram Village, Chennai and also for damages. Although the suit was decreed, the petitioners filed Appeal Suit No.15 of 2004 / 62 of 2013, 17 of 2013 on the file of the District Court, Tiruvallur, which was also subsequently dismissed. As against that, Second Appeal No.892 of 2016 / 677 of 2016 / 678 of 2016 was filed. At the time of entertaining the second appeal, this Court was pleased to grant an order of stay of all further proceedings on condition that the petitioners had to deposit the entire arrears of rent. In compliance of the said order, the petitioners also deposited the entire arrears of rent to the credit of the second appeal and the monthly rent also has been regularly deposited till November, 2018. When the second appeal was taken up finally, it was also dismissed vacating the order of stay granted earlier, giving a reason that the petitioners cannot question the title of the landlord. Aggrieved thereby, the petitioners took up the matter before the Supreme Court in S.L.P.(C)No.30423 of 2018 / 30425 of 2018 / 30362 of 2018 and the same is also pending.

3. In the meanwhile, a question has arisen as to how the petitioners can pay the rent. When there was a conditional order of stay granted by this Court in the respective second

appeal directing the petitioners to deposit the arrears of rent to the credit of the respective second appeal, the petitioners have to do so till the special leave petition preferred by the petitioner(s) is disposed of by the Apex Court. Leaving that course unutilised, the petitioners cannot maintain these writ petitions. As rightly held by this Court in the second appeal, the petitioners being tenants cannot question the title of the fifth respondent. The reason being that the fifth respondent was able to succeed before all the Courts viz., trial Court, first appellate Court and the second appellate Court and when the judgment and decree passed by the trial Court were confirmed by both the first appellate Court and the second appellate Court, special leave petition(s) has been filed by the respective petitioner(s) and the same is pending. When the petitioners are having effective, alternative and efficacious remedy before the Apex Court in the pending special leave petition(s), it is not proper for the writ Court to entertain the prayer under its extraordinary jurisdiction. Equally it is also a well settled legal principle that when an alternative remedy is available under any Act or Rules made thereunder to an affected party, in such cases, the filing of writ petition before the High Court under Article 226 of the Constitution can be said to be an abuse of the process of law. This apart, admittedly, when a suit was also filed by the Commissioner, Urban Land Ceiling and Urban Land Tax in O.S.No.449 of 2014 before the Principal District Munsif Court, Poonamalle seeking a decree for permanent injunction restraining the fifth respondent from collecting the rent from the tenants who were in occupation of the land in Survey No.151/1B, Ramapuram Village, the said suit was also dismissed for default. That proceedings became final and concluded. Therefore, in my considered view, the petitioners, being admittedly tenants under the fifth respondent, have no legal right to question the title of the fifth respondent and more so, when they have no locus to come to this Court to maintain the writ petitions. Therefore, the writ petitions fail and they are dismissed. Consequently, W.M.P.Nos.7384, 7388, 7390 of 2019 are also dismissed. No costs.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Department of Revenue
Fort St.George
Chennai 600 009
2. The Special Commissioner and
Commissioner of Urban Land Tax
and Urban Land Ceiling
Chepauk
Chennai 600 005
3. The Assistant Commissioner
Mylapore (Urban Land Ceiling)
345, Arcot Road
Kodambakkam
Chennai 600 024
4. The Assistant Commissioner
(Urban Land Ceiling)
Door No.153, Karunegar Street
Opp.to IOB Building
Adambakkam Chennai 600 089

+3cc to Ms.C.Uma, Advocate SR.No.22462,22463,21923

+1cc to Government Pleader, High Court Madras SR.No.23195

W.P.Nos.6560, 6562, 6563 of 2019

GP (CO)
GMY (23/04/2019)

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