

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.04.2019

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.14539 of 2010
and
M.P.No.1 of 2010

A.Murugesan

... Petitioner

Vs.

1. The Secretary to Government,
Public Welfare Department,
St.George Fort, Chennai.

2. The Deen,
RSRM Hospital, Royapuram,
Chennai.

3. The Asst. Executive Engineer,
PWD, Stanley Sub Division,
Chennai - 1.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in pursuant to the Impugned order passed by the third respondent in Show Cause Notice No.AEE/Sty/F-27(30)2010 dated 28.06.2010 and quash the same and consequently, direct the respondents 1 to 3 to allot the same to the petitioner herein.

For Petitioner : Mr.R.Sivaraman
No Appearance

For Respondents: Mr.R.P.Prathap Singh
Government Advocate

ORDER

This Writ Petition has been filed seeking to quash the Show Cause Notice issued by the third respondent in Show Cause Notice No.AEE/Sty/F-27(30)2010 dated 28.06.2010 and to direct the respondents to allot the telephone booth at RSRM Hospital, Royapuram, to the petitioner herein.

2. The case of the petitioner is that he had been affected by polio attack in his childhood and had lost his two legs. Since his family is very poor, his brothers and sisters got married and his father also died, he was unable to take care of him and his family. Therefore, he applied for the telephone booth at RSRM Hospital, Royapuram and the same had been allotted to an extent of 24 Sq.ft. (6 x 4). He has been running the telephone booth for the past six years at RSRM Hospital, Royapuram. In the mean time, due to illegal relationship, his wife eloped with one person leaving him alone. Therefore, he is running his life, maintaining his old aged mother out of the income of the telephone booth.

3. The petitioner submitted that from the date of opening of the telephone booth, the second and third respondents demanded money for running the telephone booth in the above premises. As the petitioner refused for the same, they started to give nuisance and issued lot of notices, compelling him to vacate the telephone booth from the RSRM Hospital, Royapuram, in order to sell it to others for money. Further, the petitioner submitted that there are two shops available within the premises of RSRM Hospital, Royapuram. The petitioner's shop is first one from the entrance of the Hospital and another one is next to him which is run by one Mr.Kumar who is blind. The respondents never disturb another shop that the reasons best known to them, but, they often used to torture him to vacate the premises though he is paying the monthly rent without any hindrance. Moreover, the petitioner submitted that he was running the telephone booth peacefully without any hindrance, while being so, the third respondent by letter dated 06.05.2010 instructed him to vacate the telephone booth before 21.05.2010 and subsequently, issued a Show Cause Notice No.AEE/Sty/F-27(30)2010 dated 28.06.2010. Therefore, he has filed this Writ Petition.

4. Denying the allegations of the petitioner, the third respondent has filed a counter affidavit, wherein, it has been submitted that the land was allotted to the petitioner on lease for a period of three years from 15.06.2004 to 14.06.2007 and an agreement was also executed for the said lease. Considering his physical inability, the land was leased to him and he was allowed to run a telephone booth without causing any hindrance during the lease agreement period. After completion of the lease period, he did not vacate the premises and therefore, several notices have been sent to him to vacate the same. However, he has not vacated the premises and he unauthorisedly occupied the Government Land for more than three years by paying the rent at the older rate. Therefore, the respondent being the estate officer of the premises has taken appropriate action against him.

5. The respondent further submitted that the Superintendent, Govt. RSRM Hospital, Royapuram, had ordered to vacate the premises within three days vide his R.C.No.981/P&D/2010 dated 09.03.2010 as the petitioner was causing nuisance, by selling soaps, combs, powder, oil etc., in the land where he was given permission to run a telephone booth. The another land allotted to Thiru.Kumar was used only for running the telephone booth and he did not violate the conditions. Therefore, there was no action being taken against him.

6. The respondent also submitted that as the N.O.C. issued to the petitioner was withdrawn, the petitioner has no right to occupy the land anymore. The notices under the Tamil Nadu Premises Act 1978 were served on the petitioner on 27.05.2010 & 04.06.2010. In spite of that he did not vacate the land. Therefore, the present show cause notice has been issued, after following all the procedures as contemplated under the Tamil Nadu Public Premises Act. Hence, sought for dismissal of this Writ Petition.

7. Heard the learned counsel for the respondents and perused the materials available on record.

8. It is seen that the petitioner had applied for the telephone booth at RSRM Hospital, Royapuram and the same was allotted to him to an extent of 24 Sq.ft. (6 x 4). However, the third respondent had issued a show cause notice directing him to vacate the same. Therefore, he is before this Court.

9. On perusal of the records, it is seen that the said land was allotted to the petitioner on lease for a period of three years from 2004 to 2007. After completion of the said period, the petitioner did not vacate the premises. Therefore, a notice has been sent by the respondents at an earlier point of time on 06.05.2010. Despite the same, the petitioner has not vacated the premises. Therefore, the impugned show cause notice dated 28.06.2010 has been issued by the third respondent, directing him to vacate the telephone booth within fourteen days from the date of service of the notice and in default of which, action would be taken to remove and dispose it of, in public action.

10. It is also seen from the records that the petitioner has been paying the rent to the respondents for the said premises. However, he has not produced any material to show that he has been authorisedly sitting in the premises from 2007 onwards. When the agreement itself entered only for a period of three years, he has been running the telephone booth for more than six years without any valid permission.

11. In view of the above facts and circumstances of the case, it is clear that the petitioner had unauthorisedly occupied the said land after completion of the lease period, therefore, the third respondent had issued the impugned show cause notice dated 28.06.2010 directing him to vacate the said land. Hence, this Court is not inclined to interfere with the same.

12. It is also brought to the notice of this Court that the petitioner himself had vacated the telephone booth and he expired on 09.06.2011. Hence, this Writ Petition has to be dismissed.

13. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(insp.cell)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Public Welfare Department,
St.George Fort, Chennai.
2. The Deen,
Government RSRM Hospital,
Royapuram, Chennai-13.
3. The Assistant Executive Engineer,
PWD, Stanley Sub Division,
Chennai-1.

+1cc to The Government Pleader, SR. No. 40673

VGII(CO)
RMP(04/07/2019)

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