

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.07.2019

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THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.Nos.32939 of 2004 & 27099 of 2005

The Union of India owning Southern Railway,
Rep. by its General Manager,
Park Town,
Chennai - 600 003.

... Petitioner in both
Writ Petitions

Vs

The Principal District Judge,
Vellore District,
Vellore.

... 1st respondent in
both W.Ps'

Munisamy

... 2nd respondent in
W.P.No.32939 of 2004

Pavanu Ammal

...2nd respondent in
W.P.No.27099 of 2005

The Estate Officer,
Divisional Railway Manager's Office,
Works Branch,
Southern Railway, Trichy.

... 3rd respondent in
both W.Ps'

Prayer in both Writ Petitions:- These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the entire records of the first respondent under the (PPE) Civil Miscellaneous Appeal Nos.3 of 2000 & 83 of 1999, including the order and decree dated 15.02.2002 & 18.12.2001 respectively and quash the same and direct the second respondent to vacate and hand over possession of the properties encroached by the second respondent to the Railway Administration.

For Petitioner in
both W.Ps'

: Mr.P.T.Ramkumar
Standing Counsel

For Respondents in
both W.Ps'

: No appearance

C O M M O N O R D E R

These Writ Petitions have been filed questioning the correctness of the order passed by the first respondent in Civil Miscellaneous Appeal Nos.3 of 2000 & 83 of 1999, whereby the orders of eviction passed by the third respondent dated 03.06.1999 under Section 5 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971, [for brevity "the Act"] were set aside.

2. According to the petitioner, the Railway Administration owns land measuring an extent of 3.36 acres comprised in S.No.722/2, Ward No.5, Block No.16 in Vellore. The said lands of the Railway had been encroached by 145 persons and they had also put up construction over the encroached area. Since the lands were acquired by the Railway Administration, a Form A notice was issued to the occupants on 19.12.1997 under Section 4 of the Act. In response to the said notice, all the occupants, including the second respondents herein made representations, stating that they have been in occupation of the said land over a period of time and the lands belong to the State Government and hence, the Railway Administration has no Authority to initiate proceedings under the Act.

3. The petitioner would claim that in view of the dispute raised over the entitlement of the lands, a joint inspection was conducted on 04.05.1999 by the Officials of the Railway Administration and Revenue of the State Government. During inspection, it was found that the lands in question absolutely belong to the writ petitioner herein.

4. The petitioner would further state that a personal hearing was provided to the occupants and thereafter, the third respondent issued Form B notice under Section 5 of the Act on 03.06.1999, calling upon all the encroachers to vacate the Railway lands within a period of 15 days. It is to be noted that when the matter was taken up to the first respondent, eviction orders were came to be set-aside, mainly on the ground that the joint inspection was not conducted in the presence of occupants and hence, it was in violation of principles of natural justice.

5. Mr.P.T.Ramkumar, learned Standing Counsel for the petitioner would submit that similar orders of the first respondent had been challenged by the petitioner and in those cases, the Division Bench set-aside the orders of the first respondent. It is the submission of the learned Standing

Counsel that the order passed by the Division Bench in the case of Union of India, rep.by its General Manager, Chennai Vs. Principal District Judge, Vellore and others [(2007) 4 MLJ 418] has been followed by the learned Single Judges in W.P.Nos.36057 & 35178 of 2003.

6. Despite service of the notice and the names of the second respondents have been printed the cause list, none appeared for them.

7. The Division Bench in the above cited judgment, has taken the view that the scope and purpose of joint inspection only to decide as to whom the property belongs to, but not to decide any right conferred on the encroachers and hence, non-issuance of notice for joint inspection would not amount to violation of any principles of natural justice. It is further observed as follows:-

"5.1. It is settled law that no person has right to encroach, by erecting any structure or otherwise, a place which is reserved or earmarked for public purpose and the public authorities are entitled to initiate action under the provisions of the Act to evict the unauthorised occupants.

5.2. The Act was enacted to provide a speedy machinery for eviction of unauthorised occupants of public premises by way of summary eviction. Section 5 of the Act provides for eviction of unauthorised occupation. Section 7 of the Act provides for recovery of rent and damages in respect of public premises from the persons who had unauthorisedly occupied the same, by appointing Estate Officers, who have been given power, after necessary enquiry to pass orders of eviction of such unauthorised occupants. The Estate Officer has also been given powers to remove and to order demolition of unauthorised constructions. Since the encroachment of the public premises are considered as a public menace which are required to be discouraged in the larger public interest, as no one has got the right to occupy or encroach the public premises, the Estate Officer is empowered to exercise his power of enquiry by adopting a summary eviction proceedings giving notice within seven days to the respective occupants, which is mandatory, not merely directory in character, as the failure to make an effective reply to the notice may result in loss of occupation of the premises."

8. Following the decision referred supra, the learned Single Judges have allowed the Writ Petition Nos.36057 & 35178 of 2003. In the light of the above fact, in the considered opinion of this Court, the petitioner is entitled to succeed in these Writ Petitions, as the Division Bench has already held that the occupants are not entitled for notice during the joint inspection.

9. Accordingly, orders impugned in these Writ Petitions are set-aside and the Writ Petitions are allowed. There is no order as to costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Vellore District,
Vellore.
2. The Estate Officer,
Divisional Railway Manager's Office,
Works Branch,
Southern Railway, Trichy.
3. The General Manager,
Union of India owning
Southern Railway,
Park Town,
Chennai - 3.

+2 ccs to M/s.P.T.Ramkumar, Advocate, S.R.No.59361

RSI (CO)
SSM(13/08/2019)

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