

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.09.2019

PRONOUNCED ON : 15.10.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.616 of 2018 and
W.M.P.No.751 of 2018

The Secretary,
Anna Nagar Towers Club,
W Block, third Main Road,
Chennai - 40.

.... Petitioner

Vs

1.Appellate Authority under
Tamil Nadu Public Premises
(Eviction of Unauthorized
Occupants) Act 1975,
Principal Judge, City Civil Court,
Chennai.

2.The Commissioner cum Estate Officer,
Corporation of Chennai,
Chennai - 600 003.

.... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of certiorarified Mandamus calling for the records of the first respondent, the appellate authority, passed under Section 9 of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 in C.M.A.No.95 of 2012 dated 20.10.2017, in confirming the order of eviction passed by the second respondent dated 21.09.2012 from the premises situate at T.S.No.41 part of Neduvankarai Village, Anna Nagar and quash the same and further direct the second respondent to follow the procedures contemplated under Act I of 1976.

For Petitioner :Mr.V.Raghavachari for
Mr.Avinash Wadhvani

For 1st Respondent :No Appearance

For 2nd Respondent: Mr.S.R.Rajagopal,
Additional Advocate General
T.C.Gopalakrishnan, Standing Counsel

ORDER

The Tamil Nadu Housing Board in late 1960's developed Naduvakkarai Village, (once a neighbourhood of Chennai city, now part of Chennai and the heart of the Greater Chennai) in the name "Anna Nagar ". The independent residential dwelling units are slowly getting converted into Commercial Complex or multi-storied apartments. This writ petition is in respect of a portion of land earmarked in the layout as lungs space, leased to a private club.

2. "Visveswaraiya Tower Park " with an extent of nearly 55,000 sq.ft. is the area earmarked and developed as park and play field. The Tamil Nadu Housing Board (TNHB) on 01.12.1988 handed over the park area to the Corporation of Chennai along with following structures which were covered around the tower in the park area:-

- i) 150 feet Tower by name " Dr. Visveswaraiya Tower" constructed in the year 1967-68.(The climbing height of 100 feet and non- climbing height of 50 feet.)
- ii) Lilly pond - An ornamental pond in the shape of '8'.
- iii) Children's park (maintained by MRF company) ,
- iv) Nursery cum Children's Park,
- v) Model House (later converted as auditorium)
- vi) Scatting Yard,
- vii) Children play space,
- viii) toilet cum pump room and
- ix) well in 16'0" diameter."

3. The petitioner club which was registered under the Societies Act in the year 1989 made a request through its General Secretary in the year 1989 to the Commissioner of Chennai Corporation to allot land for their club activities. The then special officer of the Corporation considered the request. He agreed and resolved to lease the auditorium building in the Tower Park, Anna Nagar for the period of three years. Land comprised in T.S No. 41 part of Block 1 A of Naduvakkarai Village, with a auditorium building of extent 5872 sqft along

with appurtenant land of extent 31992 sq.ft was the site under the said resolution agreed to be leased out to the petitioner subject to adherence of procedure mentioned in the note for circle officer III, Corporation of Chennai vide communication ref L & ED. C.No. SC 2/1361/89.

4.The Commissioner of the Chennai Corporation however thought fit that the land and building of auditorium in 5872 sq.ft alone to be leased and not the land appurtenant to the building. So, he issued proceedings on 20/05/1991 fixing rent of Rs.7,769/- per month in respect of the auditorium building measuring about 5872 sq.ft for a period of 3 years from 04/09/1989, on condition that the lease deed should be executed immediately and get registered. The lease deed never executed and registered. Anyhow, the petitioner was permitted to take possession of the building. After expiry of the three years lease period, by a resolution, the lease term was extended for a further period of one year. Thereafter, the Corporation was not interested to extend the lease since the petitioner club which was given lease of the auditorium, slowly started enjoying the land appurtenant to the building without any permission and also had put up constructions. However, the petitioner club was repeatedly giving representation to the Government for grant of long lease.

5.When the Corporation authorities attempted to inspect the buildings of the club, they were prevented. When they started questioning the petitioner club about the encroachment and constructions on it, the Secretary to the petitioner club has made a request to the Commissioner on 16/07/1993 to ratify their action of utilizing the 31992 sq.ft land appurtenant to the building which were not part of the lease. Further, quoting frequent visit by corporation officials and questioning their encroachment request was made in the said letter to regularise their encroachment upon the tarred portion of land measuring 8632 sq.ft and the portion of the land where they have put up a shuttle cock court measuring 4403 sq.ft.

6.In the said circumstances, notice under section 4 of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants)

Act, 1975 (hereinafter referred to as the Act) was issued to the petitioner club on 28/07/2011 calling upon to show cause why the club should not be evicted for unauthorisedly occupying 33,255 sq.ft of Corporation land. In this notice, it is specifically stated that the petitioner club was given lease of 5872 sq.ft building and that lease tenure expired and not renewed. While so, the club besides the building leased to it also occupying and enjoying 33,255 sq.ft of land without permission and authorisation, hence, the club has to be evicted

from the premises. To the said show cause notice, the club has responded through a letter dated 30/01/2012 narrating the need for a recreation club and the activities carried by the club. It has requested to renew and grant permission and assign the building and the entire land appurtenant to the building to the petitioner club recognising it as tenant by holding over and as a permissive occupier. The President of the petitioner club has sought for 99 years lease on nominal and just rent through this letter.

7.The Estate Officer/ Commissioner after enquiry, holding that the petitioner club is unauthorisedly occupying the corporation land. Issued proceedings dated 10/05/2012 ordering the club to pay damages of Rs.48,85,893/- for the use and occupation. The petitioner club failed to pay the damages demanded. Then the Estate Officer/ Commissioner passed order of eviction on 21/09/2012. The petitioner club was directed to vacate the premises and hand over it within 7 days.

8.The petitioner club exercising the appeal remedy under section 9 of the Act, preferred CMA 95/2012 before the City Civil Court , Chennai. The Civil Court granted interim stay of the eviction order on condition to pay the damages demanded. Pursuant to the direction of the Principal Judge, the Club has remitted Rs.48,85,893/- by way of cheque dated 26/09/2012. Later when the matter came up for final disposal, after hearing both sides, the Principal Judge, City Civil Court Chennai dismissed the CMA 95/2012 upholding the order of eviction passed by the Estate Officer/ Commissioner. The said order is impugned in this writ petition.

9.The learned counsel appearing for the petitioner club made his submission as under:-

a) Being in occupation for more than 19 years and paying the rent, the petitioner club cannot be construed as unauthorised occupant. The club is a statutory tenant. Without notice of termination of lease, the second respondent has proceeded with eviction process.

b) The petitioner club has requested the Government to extend the lease for 99 years and the application is pending before the Government for consideration. While so the club cannot be termed as unauthorised occupant.

c) Under the Public premises (Eviction and Unauthorised Occupants) Act, 1975 the Estate Officer has to be appointed by the Government by a notification. No such authorisation given to the Commissioner of Corporation to act as Estate Officer.

d) As commissioner of the Corporation, he is the owner of the property. He cannot be estate officer and decide upon his own cause. Since the second respondent has played dual role his order is bad in law.

e) The Commissioner on 16/12/2010 initiated proceedings for collection of damages for use and occupation. Simultaneously issued notice under section 4(1) of the Act on 28/07/2011 for eviction. Enquiry was conducted in common for both the notice and composite order was passed. Hence the eviction order is liable to be set aside.

f) Natural justice principle not followed by the estate officer. No proper opportunity was given to the petitioner. The violation of procedure has deprived the petitioner from properly defending the case.

g) The appellant authority failed to consider the reasons given by the second respondent in the show cause notice and the reason given in the eviction order are totally different. The petitioner club is paying the rent regularly and the second respondent also receiving the same without objection. When the petitioner is ready and willing to pay the rent demanded, there is no need to evict.

10.The learned counsel for the petitioner would add that, the petitioner has come to know that the subject land has been classified as Institutional Zone under the master plan. It is not classified as Park area. So, the guidelines of the Hon'ble Supreme Court that space earmarked for public purpose should not be converted for any other purpose will not apply to the present case.

11.The second respondent has filed the counter affidavit denying each and every allegations made by the petitioner. Stating that the petitioner club was granted lease only for 5872 sq.ft of building for a period of three years. Whereas, the petitioner has encroached about 33255 sq.ft of land and put up

constructions illegally. The procedure issuing notice of termination of lease apply only for lawful leases. It does not apply for illegal encroachers. To the show cause notice the petitioner replied on 16/08/2011. After considering the submission, eviction order was passed by the Estate Officer. The notice calling upon to pay damages was issued on 10/05/2012 whereas, eviction notice was issued on 21/09/2012. No composite order was passed as alleged by the petitioner. The money tendered by the petitioner club is accounted towards the damages for use and occupation. The receipt of the payment does not give any sanctity to the petitioners act of illegal encroachment.

12. Listing out the reasons for causing eviction notice and need of the land for the public use, the learned Additional Advocate General appearing for the second respondent submitted that, the petitioner club was never permitted or given lease to occupy land more than 5872 sqft upon which the auditorium stood. The petitioner have altered the building, put up new constructions and gradually encroached nearly 35,000 sq.ft. The violation of lease terms, unauthorised construction and illegal encroachment warrants eviction.

13. The second respondent furnishing the list of unauthorised constructions in the encroached land, also submit that when the eviction order was passed and later one of the unauthorised structure was sealed, the petitioner club approached the State Consumer Redressal Forum which has no subjectorial jurisdiction and obtained exparte interim order of unsealing the premises. Pointing out that when the proceeding under Public Premises Act seized by the Civil Court and pending in CMA 95/2012 and the petitioner writ of Mandamus in W.P.No.8648 of 2014 pending before High Court, the petitioner instead of approaching these forums for redressal of grievance if any, approached the Consumer Forum and obtained without notice an exparte interim mandatory order against the Corporation.

14. The club with elites as its members have no regards to law. It has violated the lease conditions and municipal laws. It is occupying land even after expiry of the lease period. It has encroached the open space and put up constructions without permission. The appellate authority having considered the violations has rightly upheld the eviction order. Therefore, the order of eviction needs no interference.

15. Heard the rival submissions. Records and the impugned

order of the appellate court perused.

16.The finding and reasoning of this court is recorded below:-

(i)Status of the petitioner club:

The petitioner entry into the corporation land is based on the Note of the Circle office III, Chennai Corporation dated 31/08/1989. This note indicates that the Special Officer of the Corporation has decided to lease out the building and land appurtenant to the building for a period of 3 years subject to observation of the procedures. The procedures , including fixation of lease rent completed and the proceeding was issued only on 20/05/1991. Under this proceedings, the petitioner club was granted lease of 5872 sq.ft auditorium building situated on the South West corner of Tower Park (Visweswaraiah Park) for a period of three years at monthly rent of Rs.7,769/-. The lease deed which was supposed to be registered as per this proceedings, was not executed and registered. While the petitioner club was granted lease of 5872 sq.ft of land and building, it claims that it has taken possession of the appurtenant land also and put up constructions on it. The extent of unauthorised constructions in the encroached land is listed by the second respondent as below:

Sl.No	Building Details	Extent
1	Multipurpose Building	14181.46 sq.ft
2	Coffee Shop	350 .62 sq.ft
3	Shuttle Court	11334.08 sq.ft
4	Kitchen Hall	1506.37 sq.ft
5	Generator Room	688.75 sq.ft
6	Toilet	517.62 sq.ft
7	Kitchen and Dining Hall	6406.18 sq.ft
8	Hand Wash	203.12 sq.ft
TOTAL CONSTRUCTED AREA		35188.20 sq.ft

(ii) The petitioner club in its representation dated 16/07/1993 admits the encroachment and unauthorised construction made by it and had sought for ratification. The admission of encroachment and illegal occupation is expressed by

the petitioner in the following manner.

"2.Ours is a 'Society' registered under the Societies Act and is governed by the memorandum and bye-laws of the Club. The Club was formed on 23rd March 1989 by some Founder Members consisting of eminent people like Judges, Senior IAS Officers, IPS Officers, Advocates, Industrialists, Businessmen, Doctors and others. Presently we have 1700 members on our rolls.

3.The Club has been formed as a relaxation and recreation centre to enable interaction and faster friendship to render public services which are conducive to their social, educational, charitable and literary advancement. It is purely a non-political and secular organization in pursuit of knowledge, skill, ethical, moral and intellectual standards. The necessary funds for running the Club are raised through subscriptions, donations and grants from individuals, institutions and fees through members in the various programmes. The Club is run on No profit and no loss basis. The management of the affairs of the Club is taken care of by an Executive Committee along with the office bearers duly elected by the members of the Club.

4.The club has been growing steadily and developing the facilities to the needs and requirements of its members. The club has a well equipped gymnasium, an indoor shuttle cock court, a restaurant, snooker tables, ayurvedic centre, gents and ladies beauty parlours, a good library, a bar room and a skilled playing cards room. Most of the members avail all the facilities regularly and the users are more at the week ends and on all holidays. There are about 100 workers serving the Club to maintain the facilities.

5.The Corporation of Chennai by its resolution dated 16.08.1989 granted lease of the auditorium building measuring 5872 sq.ft for a period of three years on a monthly

amount of Rs.7769/-. The lease was from 04.09.1989 to 03.09.1992. The lease was extended from 03.09.1992 to 02.09.1993. On taking over the lease land on 04.09.1989, the club started using the lease land and also the appurtenant land measuring 31992 sq.ft to its activities such as open shuttle cock courts, volley ball court and tennis court and also used the open place as chatting area for the members. Though the club right from 1992 requested the Corporation of Chennai to extend the renewal of the lease, there was no response. However, they have been accepting the lease amounts regularly."

(iii) The Appellate Court in CMA No.95 of 2012 has rightly pointed out that the petitioner club was granted lease only for the auditorium in 5872 sq.ft of land through the proceedings of the Commissioner. Whereas, it is an attempt to mislead the Court by saying the petitioner club was granted lease of auditorium in 5872 sq.ft of land and the vacant land of 31,992 sq.ft. appurtenant to it. "The note to circle officer III" which the petitioner club relies is only the internal communication prior to the proceedings of the Commissioner. Office notes have no legal enforceability. The note is made during the process of decision making. The ultimate decision alone matters and not the discussion or recommendations during the process it underwent. Therefore, except land measuring 5872 sq.ft, the petitioner club is to be termed as unauthorised occupier from the inception in respect of the rest of the land.

(iv) As far as auditorium in the 5872 sq.ft, the entry of the petitioner club into this portion of the land is by the proceedings of the Commissioner dated 20/05/1991. As per this proceedings, the petitioner and the Corporation ought to have executed lease deed and got it duly registered. There is no lease deed executed by both the parties and got it registered. Though the lease was for 3 years, the deed was not registered as per section 107 of the Transfer of Property Act. The fact being so, the permission to enter, remains as permission and not blow into a contractual right or statutory right. In such circumstances, the petitioner club cannot be termed as a tenant by holding over. The club status at the most can be termed as permissive occupant. So, after the expiry of lease period and by efflux of time and by altering the structure of the building without authority or permission or authorisation, the petitioner club has lost its character of permissive occupier

even in respect of the land to the extent of 5872 sq.ft. So, no termination notice is required.

(v)Conduct of the petitioner club and reaction of the corporation :

When the actual lease was only for 5872 sqft land and building, the petitioner club without any compunction had spread its tentacles into the area around the leased portion. It has usurped and constructed buildings in the Open Space Reservation (OSR) contrary to the Hon'ble Supreme Court mandate and building Rules. In total disregard to rule of law, the petitioner Club has encroached the park space and squatting over it. The second respondent being the executive head of the Corporation and the Estate Officer has taken action as per the law. The notice under section 4(1) and the eviction order under section 5 (1) of the Act dated 21/09/2012 are distinct and not linked with the recovery of damages order. The incidental order for recovery of damages passed on 10/05/2012 is much earlier to the eviction order. In a same enquiry, two distinct orders for two different reliefs can be passed. There is no statutory bar or illegality in it. The order of eviction is the subject matter of CMA No.95 of 2012 and the present writ petition. If any defect in the recovery notice dated 10/05/2012, it is a different cause of action for the petitioner club to agitate.

(vi)It is contended by the petitioner that after disposal of the above appeal (CMA), the club came to know that the subject area is classified as Institutional Zone under the Master Plan-II vide MP-II/CITY 24/2008 dated 19/09/2008. Therefore, the conclusion of the Appellate Judge that the subject land is park area is not correct.

(vii)Even according to the documents relied by the petitioner, the Master Plan II and the Development Regulations vol-II, list of buildings or premises which could be permitted in the Institutional Zone is provided. Only buildings for specified use listed in the regulation 19 can be constructed in this zone. All uses not specifically mentioned in the regulation 19(1) are prohibited under regulation 19(2). Under regulation 19(1) A (vi), in the institutional use zone, Parks, play fields, swimming pools and other public and semi public open spaces are normally permissible. The classification of the subject area a institutional zone under Master Plan II no way enhance the case of the petitioner nor discredits the finding of the Appellate Court. It is a fact admitted by the petitioner that the club was

granted lease of a building inside the "Dr.Visveshwaraiah park". The approved layout earmarks the portion as public park space. Park and playfields is one among the eleven categories mentioned in Regulation 19(1)(A) under the Institutional Zone where normal permission is required for putting up construction. There are 10 other categories mentioned in Regulation 19(1)(B) where construction is permissible only on special permission from CMDA.

(viii) Under the classification of Institutional Zone, park and play field is one species. This does not give any right for a private club to put up construction without permission in the area meant for park and play fields. The classification pointed out by the petitioner club does not give any right or justification to encroach and put illegal construction without permission.

(ix) Yet another strange plea put forth by the petitioner club is that, the Commissioner is deemed to be the owner of the corporation land, so he cannot act as the estate officer and hear his own cause was advanced by the petitioner club. To say the least, this is an argument to be termed as childish.

(x) The officers holding post by their designation carry on their duties assigned to them. They as public servants and are custodians of the public records and public properties. By no stretch of imagination, the officials can be deemed as the owners of the public property which they administer under official capacity. It is very disheartening that the petitioner club carrying the names of retired Judges and senior bureaucrats as its past and present office bearers had violated all basic rule of tenancy, tried its luck by shopping forums preventing the Corporation from recovering the possession by putting forth untenable arguments like one referred above.

(xi) It appears nearly 31,000 sq.ft of open space out of 55,000 sq.ft earmarked for Dr.Visveswaraiah park has been encroached and occupied by a private club. Unauthorised structures are put up by the club to cater the need of few elites. The land in possession of the petitioner club and the constructions put up by it are constructed without planning permission and authorisation. Hence, they are all bound to be removed. The purpose of the TamilNadu Public Premises (Eviction of unauthorised occupants) Act, is to remove the unauthorised occupation and restore the possession with the public body. In

this case, the Appellate Authority has given cogent reasons for upholding the order of eviction. In the absence of any irregularity or illegality, the Appellate Court order is to sustain. None of the grounds raised by the petitioner club provides one good reason to interfere the appellate court order.

17.In view of the above discussions, the writ petition is dismissed as devoid of merit. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.Appellate Authority under
Tamil Nadu Public Premises
(Eviction of Unauthorized
Occupants) Act 1975,
Principal Judge, City Civil Court,
Chennai.

2.The Commissioner cum Estate Officer,
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Chennai - 600 003.

+lcc to T.C.Gopalakrishnan, Advocate sr.86001

+lcc to Mr.V.Raghavachari, Advocate sr.85862

W.P.No.616 of 2018

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