

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED :24.06.2019

CORAM  
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.17500 of 2005

M.Parvathy

..Petitioner

vs

1. The Commissioner,  
Chennai Corporation,  
Ripon Building,  
Chennai-600 003.

2. The Revenue Officer,  
Corporation of Chennai,  
Ripon Buildings,  
Chennai-600 003.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, to call for the records of 1<sup>st</sup> respondents particularly that of the 1<sup>st</sup> respondent in L&E.D.C.No.LE4/2491/56, dated 09.07.2004 and the consequential proceedings of the 2<sup>nd</sup> respondent in Z.O. IV R.D.G.No.R3/510/05 dated 09.05.2005 and quash the same as illegal, unlawful, without jurisdiction and against principles of natural justice and consequently forbear the respondents 1 and 2, their men, agents, servants etc. from in any manner disturb the petitioner's peaceful possession and enjoyment over the property situate at No.52, Subbarayan 2<sup>nd</sup> street, Nammalvarpet, Chennai-600 012.

For Petitioner : Mr.T.S.Rajamohan

For Respondent : G.Anantharangan  
Standing Counsel  
for Chennai Corporation

WEB COPY  
O R D E R

The petitioner has filed the writ petition for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondents particularly that of the 1<sup>st</sup> respondent in L&E.D.C.No.LE4/2491/56, dated 09.07.2004 and the consequential proceedings of the 2<sup>nd</sup> respondent in Z.O. IV R.D.C.No.R3/510/05 dated 09.05.2005 and quash the same as illegal, unlawful, without jurisdiction and against principles of natural justice

and consequently forbear the respondents 1 and 2, their men, agents, servants etc. from in any manner disturb the petitioner's peaceful possession and enjoyment over the property situate at No.52, Subbarayan 2<sup>nd</sup> street, Nammalvarpet, Chennai-600 012.

2. The case of the petitioner is that the petitioner's father in law was a specialist bone setter using native medicines. Recognizing his services, the respondents leased out the land on 27.06.1956 vide R.D.C.No.F7-2491/56. The lease agreement was extended periodically from time to time. By virtue of G.O.Ms.No.683 LA dated 28.03.1959, the respondents contributed a sum of Rs.100/- per month towards the recognition of non-medical work contributed by the petitioner's father in law. The petitioner's father in law was running the bone setting home under the name and style 'Subbanarayana Bone Setting Home'. The petitioner contended that the petitioner's father in law died in the year 1977, after his death, the petitioner's husband Mr.G.Munnusamy was running the above Bone Setting Home. The respondents continued to pay the contribution amount even after the death of the petitioner father in law.

3. The petitioner submitted that the land leased by the respondents was put to use by constructing building. Since the respondents initiated proceedings to demolish the said building, during the year 1985, the petitioner husband filed O.S.No.6359 of 1985 before the IV Assistant Judge, City Civil Court, Chennai. The said suit was decreed in favour of the petitioner husband on 18.08.1987 whereby the respondents were restrained from demolishing the super structure or any part thereof in the above property. Thereafter, vide proceedings dated 21.09.2001, the 1<sup>st</sup> respondent, referring to Government letter dated 25.02.2000 and the resolution of the Chennai Corporation No.432/2000 dated 20.07.2000 called upon the petitioner to pay a sum of Rs.1,74,400/- towards one time settlement for continuous occupation and usage of the above property. On receipt of the said communication, the petitioner made a representation requesting the respondents to show concessions regarding the one time settlement. Based on the petitioner letter dated 10.10.2001, the 1<sup>st</sup> respondent vide proceedings dated 07.02.2002, called upon the petitioner to pay a sum of Rs.95,788.35/-. Accordingly, the petitioner paid a sum of Rs.25,000/- on 14.11.2002, then further sum of Rs.10,000 on 07.02.2005 and sum of Rs.10,000/- on 07.04.2005. Therefore, the petitioner had paid a sum of Rs.45,000/- out of total sum of Rs.95,788.35/-. Now, the petitioner has to pay balance sum of Rs.50,788.35/-.

4. While, so the 1<sup>st</sup> respondent vide L & E D.C.No.LE4/2491/56 dated 09.07.2004, passed an order stating that the property under the 1<sup>st</sup> respondent's occupation is required for the use of Chennai Corporation for public purpose

and called upon the petitioner to quit and deliver the vacant possession of the land within one month. The 2<sup>nd</sup> respondent sent one communication dated 09.05.2005 stating that since the lease was terminated, the assessment of super structure tax is cancelled with effect from 09.07.2004. The petitioner received the letter of the 2<sup>nd</sup> respondent on 16.05.2005. In fact, the proceedings of the 1<sup>st</sup> respondent dated 09.07.2004 was enclosed along with the proceedings dated 09.05.2005. Challenging the above proceedings, the present writ petition is filed.

5. The learned counsel for the petitioner would submit that the respondents entered into lease agreement in the year 1956, the lease agreement was extended periodically from time to time in favour of the petitioner's father in law. The petitioner's father in law was continuously to paying the lease rent to the respondents. Though the first respondent had demanded Rs.1,74,400/- towards one time settlement for continuous occupation and usage of the above property, the petitioner requested the respondents to show concessions regarding the one time settlement and subsequently, by proceedings dated 07.02.2002 the petitioner was called upon to pay a sum of Rs.95,788.35/- to the respondents. The petitioner has paid a sum of Rs.95,788.35/-. The learned counsel further stated that the petitioner is ready and willing to pay the remaining amount of Rs.50,788.35. The learned counsel for the petitioner submitted that the 1<sup>st</sup> respondent in L&E.D.C.No.LE4/2491/56, dated 09.07.2004 and the consequential proceedings of the 2<sup>nd</sup> respondent in Z.O.IV.R.D.C.No.R3/510/05 dated 09.05.2005 and quash the same as illegal. The petitioner submitted that a direction may be granted to the 2<sup>nd</sup> respondent to receive the balance regularization charges in sum of Rs.50,788.35/- by virtue of proceedings in Ni.Ma.U.Thu.Na.Ka.No.LE4/2491/56 dated 07.02.2002 pending disposal of the writ petition.

6. The learned standing counsel for the respondents stated that the petitioner being a relative of the Ex-Lessee has no right to claim any right over the public property. Moreover, no lease was given in favour of the petitioner. Further, after the expiry of the lease, it was not at all renewed. The lease has expired long back. On 21.09.2001, a letter has been sent to the Ex-Lessee(Thiru.Gajendran) along with the demand for Rs.1,74,400/- towards arrears of land rent for the period from 01.04.1989 to 31.03.2001. The petitioner submitted a representation dated 10.10.2001, wherein she stated that the site under issue was not used for commercial purpose. Hence, the demand raised on the basis of commercial rate was revised and fresh demand for Rs.95,788.35/- was sent to the petitioner. The petitioner has failed to pay the arrears of land rent. On 14.11.2002, the petitioner has remitted only a sum of Rs.25,000/-. The demand sent to the petitioner was only for the period up to 31.03.2001. As on 01.07.2005, she has to remit a

sum of Rs.1,20,861/- towards damage fee for use and occupation of land. Since the petitioner is an unauthorized occupant(after expiry of lease) a show cause notice vide letter no.LE3/2491/1956, dated 30.10.2015 has been served on her under Section 4 Tamil Nadu Public Premises (Eviction of unauthorized occupants Act) wherein a sum of Rs.3,37,108/- has been claimed by the defendant as damage fee for use and occupation for the period from 01.04.1989 to 31.03.2015, the plaintiff do not possess valid lease/license from the defendant Corporation. The petitioner has paid damage fee for the use and occupation of the above land of Rs.1,53,333/- only against the demand of Rs.4,15,842/- upto 31.03.2018, and she has to remit balance amount including service tax which works out to Rs.2,93,111/-.

7. In view of the above factual position, the petitioner is an unauthorized occupant and has no right to claim over the public property. The lease has been expired long back. However, no records submitted before this Court i.e., extension of lease in favour of the petitioner's husband as well as the petitioner. In the absence of any proof for extension of lease document in favor of the petitioner name or in the petitioner's husband name, the petitioner's occupation in the property is an illegal one. The very same issue decided before this Court in W.P.Nos.16270 to 16285, 16293 to 16301 and 16303 to 16309 of 2009, 16363 to 16309 of 2009, 16363 to 16376 of 2009 dated 04.11.2009 (Balasubramaniam vs. The Commissioner), the relevant paragraph Nos.28 to 31 which is extracted hereunder:

"28. Another Division bench judgment of this Court presided over by Markendey Katju, C.J. (as he then was) vide its judgment in A.Thayal Nayagi Vs. Union of India owning Southern Railway represented by its General Manager, Chennai and others reported in 2005 (1) MLJ 453 had set out the object of the Public Premises (Eviction of unauthorised Occupants) Act, 1971 in the following lines:

"6....The object of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is to forcibly evict unauthorised occupants who are deliberately remaining in occupation of public premises unauthorisedly. Hence the impugned judgment of the learned single Judge is fulfilling exactly the same object which the aforesaid Act aims at, namely, to forcibly throw out unauthorised occupants from public property. Decent people vacate the premises when the period of lease or license expires. When a person does not behave in a decent manner, the only way left is to forcibly throw him out. It is for this purpose that the aforesaid Act was enacted, and the same object has been achieved by the learned single Judge namely, to throw out an unauthorised occupant. Hence, we see no reason to interfere with the judgment of the learned single Judge, which is eminently just and fair. The writ appeal is dismissed...."

29.The above observations may not be in tune with the spirit of the Act over which interpretations were given by the Supreme Court. To highlight the said proposition it will be useful to refer to the decision of the Supreme Court in New India Assurance Co. Ltd. Vs. Nusli Neville Wadia and another reported in 2008 (3) SCC 279. The following passages found in paragraphs 40, 41 and 57 from the said judgment may be extracted below:

"40.For the said purpose, Sections 4 and 5 of the Act must be read together. Even the Rules which are validly framed must be read along with the statutory provisions. Ordinarily although a tenant occupying the property belonging to a government may be somewhat in a worse position than a tenant having protection under the Rent Control Act as has been held by the Full Bench of the Calcutta High Court in Standard Literature Co.(P) Ltd. Vs. Union of India (AIR 1968 Cal 1) but with a view to interpret the provisions of the Act, we must take into consideration the decisions of this Court laying down the concept of "bona fide act" and the "fair action" on the part of the owner as laid down in Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay ((1989) 3SCC 293) and Ashoka Marketing Ltd. Vs. Punjab National Bank ((1990) 4 SCC 406).

41.In Dwarkadas Marfatia this Court clearly held that : (SCC p.303, para 17) "17.... the public authorities which enjoy this benefit without being hidebound by the requirements of the Rent Act must act for public benefit. Hence, to that extent, that is liable to be gone into and can be the subject-matter of adjudication."

.....  
57.We, however, must not shut our eyes to the objects for which the Act was enacted. It provided for a speedy remedy. The Estate Officer is expected to arrive at a decision as expeditiously as possible. The provisions of the Code of Civil Procedure and the Evidence Act being not applicable, what is necessary to be complied with is the principles of natural justice."

30.In view of the above facts, it can be clearly stated that the petitioners did not possess any lease or sublease either from the Corporation or from the second respondent Trust Board. Even if they had permitted to be in possession by the Trust Board, the original lease having expired in 1985 and there being no further continuance of lease, they are not entitled to contend that they are still under permissive occupation of place at the instance of the second respondent Trust. On the contrary, in resolution No.5 of the Trust Board meeting, dated 11.3.2009, the Trust had agreed that appropriate action should be taken to evict the petitioners and the Commissioner was fully authorised to take action against

the so-called sublessees of the trust. Even the Trust had stopped receiving rents from the petitioners.

31. In the impugned notice, dated 5.8.2009, the Corporation had clearly stated that if the petitioners did not vacate the premises within seven days, appropriate legal action will be taken against them. Therefore, the challenge to the impugned notice is misconceived and not based upon any enforceable legal right. This court, for the reasons set out above, is not inclined to interfere with the impugned notice, dated 5.8.2009. If they are interested in accepting the offer of alternative accommodation, they can make applications to the Commissioner of Corporation, Chennai for allotment of places on the terms and conditions as per law. It is open to the Corporation of Chennai to take appropriate legal action for getting possession of the premises occupied by the petitioners."

8. In view of the above lines, this Court is not inclined to entertain this writ petition. Therefore, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssb

To:

1. The Commissioner,  
Chennai Corporation,  
Rippon Building,  
Chennai - 600 003.

2. The Revenue Officer,  
Corporation of Chennai,  
Rippon Buildings,  
Chennai - 600 003.

+1cc to Mr.T.S.Rajamohan, Advocate, S.R.No.51895

W.P.No.17500 of 2005

SSD(CO)

RRS (08/08/2019)