

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.01.2019

CORAM

THE HON'BLE MR JUSTICE M. VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

W.P.No.18554 of 2016
and WMP No.16249 of 2016

M. Karthik

... Petitioner

Vs

The Estate Officer and Chief Engineer,
Furnishing Division,
Integral Coach Factory,
Perambur,
Chennai - 600 038

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorari to call for the records relating to the impugned order dated 04.01.2016 in No.W/W/25(pc) issued by the Respondent and quash the same.

For petitioner : Mr.E. Vinoth Kumar

For Respondent : Ms.A. Nansi Pushpalatha
for Mr.T. Ramkumar

ORDER

(Order of the Court was made by M VENUGOPAL, J.,)

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondent.

2. No Counter is filed on behalf of the Respondent.

3. According to the Petitioner, he purchased a vacant Land, measuring to an extent of 1040 sq.ft comprised in Survey No.183/1A1 and 1A2 part, T.S.No.112/2, Block No.28, Villivakkam Village, Chennai District from (1) K. Sankar, (2) K. Selvam and (3) K. Krishnan as per Registered Sale Deed dated 03.05.2010 (vide Document No.1629/2010 on the file of Sub Registrar Office, Villivakkam). The Petitioner's vendor had got the subject property through a Registered Sale Deed dated 22.03.2007 (vide Document No.1235/2007) from one G. Govindarajan through his Power of Attorney N. Kumar.

4. After purchasing the property, the Petitioner had constructed a dwelling house thereon and is in peaceful possession and enjoyment of the Property till date with his family members. The Property is assessed to Property Tax and there is Electricity Service connection and his family is possessed of Ration Card etc., He is a bonafide purchaser of the Property, in issue, having absolute right and interest over it.

5. At this juncture, the Learned Counsel for the Petitioner brings it to the Notice of this Court that on earlier occasion, the Respondent issued a Show Cause Notice dated 08.03.2005 to one B. Vasu, who is the agent of the Petitioner's Vendor's Vendor N. Kumar (GPA), who filed Writ Petition in W.P.No.16857 of 2005 before this Court and on 05.07.2005, this Court was pleased to direct the Respondent to dispose of the matter in accordance with Law within 12 weeks from the date of receipt of a copy of the Order. However, the said direction was not complied with by the Respondent/Integral Coach Factory, Perambur, Chennai, but issued the Impugned Proceedings dated 04.01.2016.

6. The Respondent issued Eviction cum Show Cause Notice dated 10.10.2014 as per Sub Section (2) of Section 5-A of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and called upon the Petitioner to remove the building on or before 27.10.2014 or to show cause why, he should not be removed within the time mentioned therein.

7. The Petitioner sent his Explanation dated 16.10.2014 to the Respondent and made a request to accept his Explanation and drop the Proceedings. In spite of his Explanation, the Respondent is continuously endeavoring to evict him from the Property without accepting his Explanation. Without issuing any Notice under Section 4(2) (a) and (b) of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1971 or conducting any enquiry under Section 8 of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the Respondent

is trying to evict him from the Property.

8. It comes to be known that on 20.08.2014, the Executive Engineer, Corporation of Chennai issued a Notice as per Sections 56 and 57 read with Section 85 of Tamil Nadu Town and Country Planning act, 1971 and also sent a reply to Corporation of Chennai, requesting it to consider his case for regularisation for construction and again that without furnishing any reply another Notice was issued on 27.08.2015, for which, the Petitioner has sent an application under section 49 of the Tamil Nadu Town and Country Planning Act, 1971 for planning permission and the same is pending.

9. The grievance of the Petitioner is that the Respondent is continuously trying to evict him from the premises. He filed a Writ Petition in W.P.No.32624 of 2015 before this Court and on 13.10.2015, this Court had disposed of the Writ Petition in directing the Respondent to consider his Representation dated 16.10.2014.

10. While so, to shock and surprise, the Respondent passed Impugned Order dated 04.01.2016 stating that the Petitioner's Representation is false and directed him to vacate the premises without providing an opportunity or enquiry under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1971, which is an illegal and unjustified one. Hence, the Petitioner has filed the present Writ Petition before this Court.

11. It is to be pointed out that a Notice under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ought to contain the description of Public Premises clearly so that all the concerned persons should know that this Notice relates to which premises as per the decision of Bhagat Singh vs Delhi Development Authority reported in AIR 1988 Del 174.

12. Admittedly, the ingredients of Section 4(2) of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 are not directive in nature. In fact, they are mandatory in character.

13. It is to be pointed out that the summary procedure under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971) specified for evicting the tenants or unauthorised occupants or sub tenants is not in breach of Art.19(1)(f) of the Constitution of India as per the decision of Hon'ble Supreme Court in Kaiser-I-Hind (P) Ltd vs National Textile Corpn (Maharashtra North) Ltd reported in (2002) 8 SCC 182.

14. Further, Section 5 of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 pertains to 'Eviction of unauthorised occupants'. Section 5-B deals with 'Order of demolition of unauthorised construction'. As per Section 5-C of the Act, the Estate Officer has 'Power to seal unauthorised constructions'.

15. Section 6 of the Act, 1971 relates to 'Disposal of property left on public premises by unauthorised occupants'. Section 7 of the Act concerns with 'Power to require payment of rent or damages in respect of public premises'. Section 8 refers to 'Powers to estate officers'. Section 9 says filing of an 'Appeal' before the District Judge of the District against every order of the Estate Officer made in respect of any Public Premises under Section 5 or Section 5-B or Section 5-C or Section 7 of the Act. In fact, Section 9 of the Act does not require the Appellate Authority to decide the Appeal on merits in the absence of the appellant and he is fully competent to dismiss it for default as per the decision in K.R.K. Talwar vs Union of India reported in AIR 1977 Del 189.

16. Section 10 of the Act enjoins of 'Finality of Orders'. Section 11 of the Act refers to 'Offences and penalty'. Section 11-A of the Act pertains to 'Offences under Section 11 to be cognizable'. Section 14 refers to 'Recovery of rent, etc., as an arrear of land revenue'. Section 15 of the Act, 1971 ousts the jurisdiction of the Court to deal with the matter of eviction or recovery of rent in respect of public premises.

17. Section 20 deals with 'Validation', which reads as under:-

" Validation: Notwithstanding any judgment, decree or order of any Court, anything done or any action taken (including rules or orders made, notices issued, evictions ordered or effected, damages assessed, rents or damages or costs recovered and proceedings initiated) or purported to have been done or taken under the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 (32 of 1958) (hereafter in this section referred to as the 1958-Act) shall be deemed to be as valid and effective as if such thing or action was done or taken under the corresponding provisions of this Act which, under sub-section (3) of section 1 shall be deemed to have come into force on the 16th day of September, 1958, and accordingly-

(a) no suit or other legal proceeding shall be maintained or continued in any Court for the refund of any rent or damages or costs recovered under the 1958-Act where such refund has been claimed merely on the ground that the said Act has been declared to be unconstitutional and void; and

(b) no Court shall enforce a decree or order directing the refund of any rent or damages or costs recovered under the 1958-Act merely on the ground that the said Act has been declared to be unconstitutional and void.

18. Added Further, in the case of Archana Dey vs South Eastern Coalfields Ltd reported in AIR 1997 Madhya Pradesh 103, it is observed and held that a Notice would not be invalidated just because Section 5-B was not referred to therein.

19. It transpires that Section 8 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 enjoins an Estate Officer, shall, for the purpose of holding any inquiry under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- © any other matter which may be prescribed.

20. It is represented on behalf of the Petitioner that the Respondent had failed to appreciate that the Petitioner's Property is T.S.No.112/2 and not as 113, at the time of passing the Impugned Order.

21. In this connection, this Court, on a mere glance of the contents of the Sale Deed dated 03.05.2010 executed by K. Sankar and two others to and in favour of M. Karthik, is of the considered view that the Schedule of the said Document reads as under:

SCHEDULE

All that piece and parcel of vacant house site bearing Plot No.A3/1 measuring an extent of 1040 Sq.ft being the western portion of Plot No.A3 measuring an extent of 3685 Sq.ft out of the total extent of 10863 Sq.ft situated at Pon

Vizha Nagar, Villivakkam, Chennai - 600 049,
comprised in Survey No.183/1A1 & 1A2 (Part),
T.S.No.112/2, Block No.28 of Villivakkam
Village, Perambur-Purasawalkam Taluk, Chennai
District and bounded on the:

North by : 10 feet Road,
South by : Land belongs to Railways,
East by : Our remaining property,
West by : Plot No.A2/B,

Measuring:

On the North : 40 feet
On the South : 40 feet
On the East : 26 feet
On the West : 26 feet

in all measuring 1040 Sq.ft of vacant land and
situated within the Sub-Registration District of
Villivakkam and Registration District of Central
Chennai.

22. It is evident from the Notice issued to the Estate Officer of the Respondent dated 04.01.2016 addressed to the Petitioner that the ICF Land in Old Survey No.183/1A1 (0.84 acres) at Villivakkam Village was acquired by ICF, vide G.O.R.No.990, P.W.(Railways), 31st July 1959, published in Govt. Gazette Notification issue No.32 of August 12, 1959 and further that as per the Survey Report received from Revenue Department letter No.A1/5622/2015 dt .09.2015 it was stated that ICF land in Old Survey No.183/1A1, 183/2B, 183/1AC and 183/1A2 is re-designated with new T.S.No.113 of Block No.28 of Villivakkam Village.

23. From the contents of the Notice dated 04.01.2016, it is crystalline clear that S.No.183/1A1 fully belongs to the Respondent/Integral Coach Factory, located at New T.S.No.113 and not at T.S.No.112/2. As such, the representation of the Petitioner is contrary to the ground realities.

24. In view of the fact that the subject property of the present Writ Petition belongs to the Respondent/Integral Coach Factor, the Petitioner cannot remain in the Property, belonging to that of the Respondent. As such, this Court unhesitatingly holds that there is no infirmity in the Impugned Order dated 04.01.2016 passed by the Respondent. Viewed in that perspective, the Writ Petition fails.

25. In fine, the Writ Petition is dismissed leaving the

parties to bear their own costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sr

To

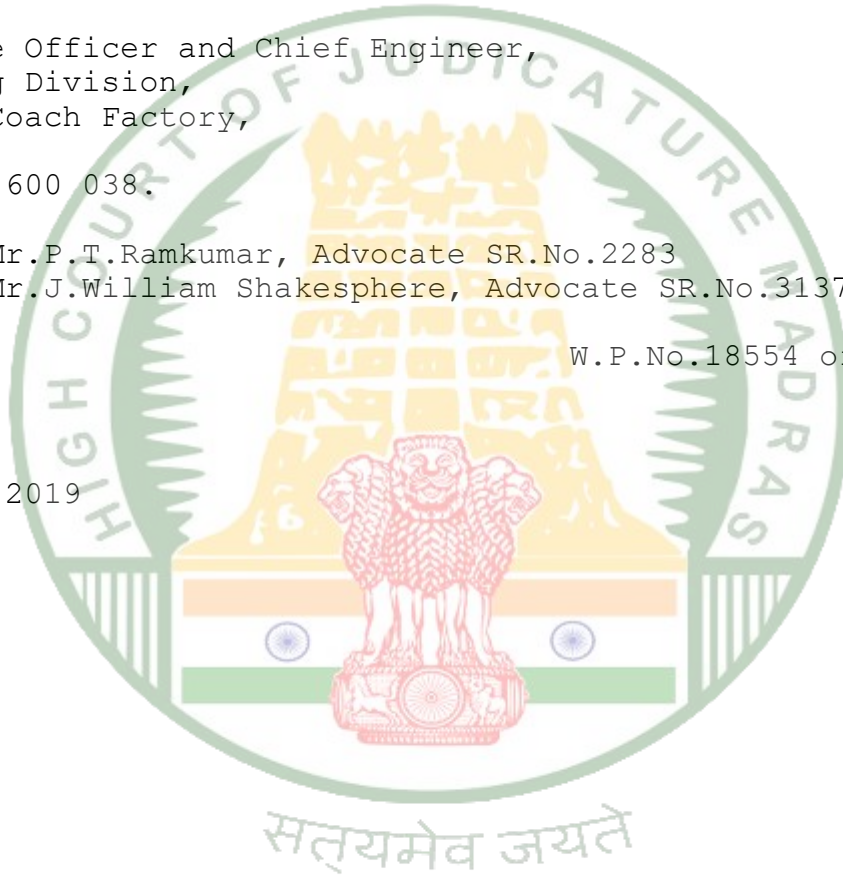
The Estate Officer and Chief Engineer,
Furnishing Division,
Integral Coach Factory,
Perambur,
Chennai - 600 038.

+1 cc to Mr.P.T.Ramkumar, Advocate SR.No.2283

+1 cc to Mr.J.William Shakesphere, Advocate SR.No.3137

W.P.No.18554 of 2016

SKV(CO)
CSL/04.02.2019



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