

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.8648 of 2014 and
M.P.No.1 of 2014

Anna Nagar Towers Club,
Represented by its Secretary,
W Block, third Main Road,
Anna Nagar,
Chennai - 40.

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Petitioner

Vs

1.The Commissioner,
Corporation of Chennai,
Chennai - 600 003.

2.The Government of Tamil Nadu,
Rep. By its Secretary,
Revenue Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

(R.2 impleaded as per order
dated 18.09.2019 in
W.M.P.No.27199 of 2019)

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Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Mandamus directing the respondents to consider the representations submitted by the petitioner on 11.06.2013 and 30.08.2013 and extend the lease granted to the petitioner Club with respect to the land and buildings present in T.S.No.41 part of Block 1A in Naduvakkarai Village.

For Petitioner :Mr.A.Jenasenan

For 1st Respondent :Mr.S.R.Rajagopal,
Additional Advocate General
Assisted by Karthika Ashok,
Standing Counsel

For 2nd Respondent :Mr.V.Jayaprakash Narayanan,
Government Pleader

ORDER

The petitioner club which was registered under the Societies Act in the year 1989 and at present have nearly 1700 members on its rolls. It is functioning in the land owned by the Chennai Corporation. Based on the request by its General Secretary in the year 1989, the then Special Officer of the Corporation agreed and resolved to lease the auditorium building in the Tower Park, Anna Nagar for the period of three years.

2.The 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. Pursuant to this, the Commissioner of the Chennai Corporation has 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. However, the petitioner club which was given lease of the auditorium started enjoying the land appurtenant to the building without any permission and also had put up constructions. When the Corporation authorities started questioning their illegal encroachment, 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 request was also 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 shuttlecock court measuring 4403 sq.ft.

3.In the said circumstances, notice under section 4 of the TamilNadu 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 they should not be evicted under the said act for being unauthorisedly occupying 33,255 sq.ft of corporation land. In this notice it, is specifically stated that the petitioner club

was given lease only 5872 sq.ft building and that lease tenure expired and not renewed. Whereas, the club besides the building leased to it, without permission, enjoying 33,255 sq.ft of land, hence, the club has to be evicted from the premises.

4.To the said show cause notice, the club has responded through a detailed letter dated 30/01/2012 narrating the need for a recreation club and the activities carried by the club 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.

5.The Estate Officer/ Commissioner after enquiry, vide his proceedings dated 10/05/2012 ordered 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.

6.The petitioner club exercising the appeal remedy under section 9 of the Act, preferred C.M.A.No.95 of 2012 before the City Civil Court , Chennai. The City 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.

7.Pending appeal in C.M.A.No.95 of 2012 on the file of Principal Judge, City Civil Court Chennai, the club has given representations to the Commissioner Corporation on 11/06/2013 and 30/08/2013 seeking extension of lease. Thereafter filed the present writ petition seeking the following relief:

"Writ of Mandamus directing the respondents to consider the representations submitted by the petitioner on 11.06.2013 and 30.08.2013 and extend the lease granted to the petitioner Club with respect to the land and buildings present in T.S.No.41 part of Block 1A in Naduvakkarai Village."

8.The Commissioner of Chennai Corporation has filed counter stating that, the auditorium measuring 5872 sq.ft inside

Visweshwaraiah Park popularly known as Anna Nagar Tower park was let out on lease to the petitioner club for a period of three years from 04/09/1989 to 03/09/1992. The lease engulfs only the building , but the club had gradually encroached on a vast area of reserved park open space. Noticing the above unauthorised encroachment and violation of lease term, action has been taken in accordance to the provisions of the Act.

9.While the lease itself was only in respect of the auditorium building, the petitioner club has constructed buildings unauthorisedly in and around the building leased.

Action under sections 56, 57 r/w 85 of the Town and Country Planning Act was initiated against the club by causing notice on 17/09/2011. After affording sufficient time, final notice for unauthorised occupation of land and building vide proceedings dated 21/09/2012 was served on the petitioner. Thereafter, the club was locked and sealed on 03/10/2012.

10.The Commissioner has alleged that the petitioner club in order to retain their illegal possession of the corporation land multiplying litigations by filing petition before the Consumer Court, Statutory appeal as well as writ petition. The present writ petition is not maintainable since, the occupation of the petitioner itself held to be unauthorised and eviction order already passed by the Estate Officer. The representation for extension of lease for 99 years was forwarded to the Government since, any lease of the Corporation land beyond 3 years can be considered only by the Government and in the case of the petitioner club, the Government has not considered their request.

11.The learned Additional Advocate General appearing for the Corporation submitted that, the petitioner club was permitted to occupy the auditorium by the Corporation. On expiry of the lease and noting unauthorised construction and occupation of the corporation land beyond the lease period and leased portion, action has been taken. Without impleading the Government as a party respondent to whom the representation was alleged to have been given, the present petition is filed. For the said reason itself the writ petition is liable to be dismissed.

12.In response to this argument, the learned counsel for the petitioner took time to implead the Government and accordingly, this Court granted time and adjourned the matter. The petition for impleading the Government of Tamil Nadu as respondent was filed. After hearing the parties on 18/09/2019 the implead petition was allowed.

13.The learned Government Pleader appeared on behalf of the Government/second respondent and submitted that, the Tamil Nadu Housing Board (TNHB) has handed over the land to the Corporation in the year 1988 for maintaining it as park and other public purpose. Thereafter, the land got vested with the Corporation. As per the Government Order, if the Corporation intends to grant lease of its properties for more than 3 years, it has to get permission from the Government. When the Corporation has already taken action for eviction on the ground of grave violation of statute and encroachment, the petitioner club has no right to seek extension of lease, more so for 99 years. The Government has no intention of considering the representations of the petitioner club.

14.The Learned Additional Advocate General appearing for the first respondent adds that, the petitioner club was found in unauthorised occupation and eviction order was passed by the Estate Officer on 21/09/2012. The Club preferred CMA No.95 of 2012 before the City civil court and same was also dismissed on 20/10/2017. Against the order passed in CMA No.95 of 2012, the petitioner club has preferred W.P.No.616 of 2018 and the same is pending. While so, under the teeth of eviction, the petitioner is trying to delay the eviction process through this writ petition citing a defunct representation.

15.To issue a writ of mandamus, the Court has to first test 'whether the petitioner who seeks the mandamus (to command) have any right (fundamental, constitutional or statutory) to enforce. Next, the Court has to find out 'whether the authority against whom the mandamus sought have any legal duty to discharge regarding the enforcement of the said right'.

16.In this case, the petitioner club admittedly in unauthorised occupation of vast extend of land owned by the Corporation. The entry into the subject land is based on the proceedings of the Commissioner dated 20/05/1991 granting 3 years lease (04/09/1989 to 03/09/1992) for the building and land in 5872 sq.ft. The lease deed for a period more than one year is supposed to be registered under section 107 of the Transfer of Property Act. In this case, though the Commissioner in his proceedings dated 20/05/1991 has instructed the parties to execute the lease deed immediately in the form enclosed and stamped/registered at the cost of the M/s.Anna Nagar Towers Club (petitioner herein). The lease deed never executed and got registered.

17.The petitioner who was permitted to occupy the building, for the period of three years initially, was by resolution of the council permitted to stay for further period of one year. The said period was also over by 03/09/1993. Even after the expiry of lease period, the petitioner who was permitted to occupy 5872 sq.ft not only continue to occupy the said land but also encroached upon the land appurtenant to the building leased to it. If the lease deed for three years was duly registered as per section 107 of the Transfer of Property Act, after the expiry of the lease period, the character of the petitioner club will be a tenant by holding over to the extent of land leased out to it. Since, the lease deed was not executed and registered, the petitioner's entry into the land could only be termed as permissive occupant by virtue of the Commissioner proceedings dated 20/5/1991 to the extent of 5872 sq.ft.

18.The order of eviction passed by the Estate Officer on 21.09.2012 is confirmed by the appellate court in C.M.A.No.95 of 2012. The order of the appellate court is the subject matter of Writ Petition No.616 of 2018. The said writ petition (W.P.616/2018) also dismissed today by this court. Therefore, at the first instance, the petitioner have no legal right to seek for renewal of lease which has come to end by initiating the eviction proceedings. Further, the Government will be obliged with a legal duty to consider the grant of lease beyond 3 years only if the Corporation has resolved to grant lease in favour of the petitioner . When the Corporation has decided not to grant lease and terminated the lease by initiated the eviction proceedings, the entire land given under the lease and the land illegally encroached and occupied by the club, should go back to the Corporation and same to be restored as open space reservation. The Government cannot convert the Open Space Reservation (OSR) for any other purpose and it is not fasten with any legal duty to consider the representation of the petitioner club.

19.When there is no legal right vest with the petitioner for enforcement, there cannot be a legal duty for the respondents to discharge. The State has no power to entertain the request of the petitioner, violating its own rules and Court dictum. While so, the Court cannot command the Government to consider the representation of the petitioner in violation of Court dictum laid in Bangalore Medical Trust vs B.S. Muddappa And Ors (1991 (AIR) 1902).

20.In the result, the writ petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner,
Corporation of Chennai,
Chennai - 600 003.

2.The Secretary,
Government of Tamil Nadu,
Revenue Department,
Secretariat, Fort St. George,
Chennai - 600 009.

+1cc to Mr.A.Jenasenan, Advocate sr.85959

+1cc to M/s.Karthika Ashok, Advocate sr.85992

W.P.No.8648 of 2014

ss(co)
nr 15/10/2019

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