

A.No.9774 of 2019 in C.S.No.204 of 1940

R.SUBBIAH, J

This application has been filed by the Official Trustee of Tamil Nadu seeking to permit him to regularise the occupants in Survey No.1742, D.No.29, Prasanna Vinayakar Koil Street, now Gandhi Nagar and Sundaragramani Thottam Mylapore, Chennai-600 004, measuring 26.5 grounds of lands as tenants to the respective land area by fixing the monthly rent of Rs.6/- Sq.Ft. for the hut house/cement sheet house/asbestos sheet house; Rs.8/- Sq.Ft. for the terraced/RCC house only in the ground floor building and Rs.10/- Sq.Ft. for the ground and multi-floor(s) house with effect from 01.01.2020, subject to revision of monthly rent after two years with 10% increase irrespective of the houses for six years lease period.

2. The learned Official Trustee of Tamil Nadu states as follows:

(a) In A.No.3783 of 1975 in C.S.No.204 of 1940, this Court, by order dated 11.03.1977, directed the Official Trustee of Tamil Nadu to take charges of the property at No.29, Prasanna Vinayagar Koil Street, Mylapore, Chennai-600 004 of Mylai Kandappa and Arunachala Chetty Charities and administer till 22.01.1979. The lands of extent of about one Caunie, 2 grounds and 1,860 Sq.Ft. with a coconut garden in R.S.No.1742 in Srinivasa Raghava Road

(Prasanna Vinayagar Koil Street), Mylapore is under the control of the Official Trustee of Tamil Nadu. The total land is 26.5 grounds.

(b) As per the order passed in A.No.4886 of 1979 in C.S.No.204 of 1940, the Official Trustee had been directed to function as sole Trustee until further orders. The Official Trustee continues to administer the Trust and has been performing the charities as per the direction of the founders of the Trust. The lands were initially given to one Mr.Parthasarathy on lease. After his demise, his wife Tmt.Kannammal took lease of the usufruct of the coconut trees for a monthly rent of Rs.125/-. The lessee had allowed the encroachers to put up huts and collected rents from them against the nature of licence granted to her. More than about 150 persons/families had occupied in the said property so far. Tmt.Kannammal had been a chronic defaulter of monthly rent to the subject premises. Hence, a notice dated 17.11.1983 was sent to her to terminate her licence.

(c) The encroachers had formed two associations, i.e. Anna Kudisai Vazhvor Munnetra Sangam and Shanmugapuram Harijan Co-operative Housing Society. The Official Trustee sent a notice dated 19.05.1983 to the encroachers to quit and deliver vacant possession. But they filed an application in A.Nos.818 to 912 of 1986 and A.Nos.1132 to 1171 of 1986 before this Court for purchase of the land and offered to pay Rs.5,000/- per ground, whereas the guideline value

was Rs.75,000/- per ground at that time. This Court dismissed all the above applications. Thereafter, the Official Trustee had filed an application in A.No.5247 of 1986 to sell the properties in 'as is where is' condition through a public auction after proper advertisement in the newspapers. This Court permitted the Official Trustee to sell the property after proper advertisement. M/s.Murray & Co., - auctioners were entrusted on 08.03.1987 to conduct public auction for sale. The same was deferred in view of the interim order given by this Court in C.M.P.No.6223 of 1987 in O.S.A.No.45 of 1987 and directed M/s.Murray & Co. to sell the property in public auction in 97 lots with reference to the occupation of each of the individual occupants and allowed to take the help of an Engineer for demarcation of the portions occupied by the occupants. But M/s.Murray & Co. expressed their inability to sell the property in public auction, since the occupants hindered them from conducting the auction.

(d) In the meanwhile, Mr.Nithyakumar and Mr.Vijayashankaran, Co-Trustees of the MKP.Marakayar Trust filed an application in A.No.85 of 1998 praying to direct the Official Trustee to hand over the administration of the Trust to them. The Official Trustee filed an application in A.No.117 of 1998 to remove the associate Trustees from M.K.A.Charities Trust. A common order was passed on 14.12.1999 in A.Nos.85/98 and 2449 of 1998 by dismissing both the applications. One Mr.Prabhu had also filed an application in in A.No.1267 of

1997 in C.S.No.204 of 1940 for purchase of the land at No.29, Prasanna Vinayakar Koil Street, Mylapore, Chennai-600 004. This Court dismissed the application and gave liberty to the Official Trustee to file an application for selling the property in the interest of the Trust.

(e) An opinion was obtained from the panel Advocate, wherein he has submitted his opinion stating that the A.G. & O.T. shall move an application and sell the property directly or through any one of the auctioneers by demarcating with the help of Engineer. But no auction was taken thereafter. On 24.06.2002, letters were addressed to the Assistant Engineer, Tamil Nadu Electricity Board, Mylapore, requesting to furnish the details of the service connection holders of the premises No.29, Prasanna Vinayagar Koil Street, Chennai-4 and the Tahsildar, Mylapore and the Corporation of Chennai and to the Election Commissioner to furnish the details of the occupants of the said premises. The copy of letter dated 20.08.2002 sent by the Revenue Officer to the Election Commissioner stating that such details could be furnished only on getting permission from the Government, was received by their office.

(f) On 15.10.2019, as per the orders of the Official Trustee, the Deputy A.G. & O.T., along with the other staff, were deputed to inspect the premises and submit a comprehensive report on their findings. The Deputy A.G. & O.T. submitted her report on 19.10.2019 stating that as per the Revenue

sketch, the boundaries of the land were measured in rough totalling to an extent of 26.5 groundss. There were two streets, i.e. Gandhi Nagar and Sundara Gramini Thottam. Nearly, there were 100 pucca buildings built in the property by the occupants. Certain occupants had mentioned about the litigation of the property and the property belongs to the Trust. About five representatives of the occupants were called to appear before the A.G. & O.T. in person to discuss about the issue. Five persons met the A.G. & O.T. on 19.10.2019 and had a lengthy discussion about the pros and cons. Again, on 04.11.2019, about ten occupants met A.G & O.T. and discussed regarding the tenancy and fixation of the rent for the occupants of the Trust property.

(g) Summons dated 14.11.2019, 20.11.2019 and 21.11.2019 were sent to the Election Commissioner, the Commissioner, Corporation of Chennai, the Sub-Registrar, the Tahsildar and the Assistant Engineer, TNEB and Civil Supplies Corporation for production of documents and appearance on 03.12.2019 at 10.30 a.m. regrding the details of the occupants of the said property, which is in process. On 18.11.2019, nearly 25 persons of men and women met the A.G. & O.T. regarding the fixation of rent. They stated that majority of the occupants have agreed to regularise them as tenants. They were again called to appear on 25.11.2019 for finalisation of fixation of rent on Sq.Ft. basis. On 20.11.2019, a letter was sent to the Sub-Registrar, Mylapore requesting him not to register any

document to the property without A.G. & O.T's consent.

(h) On 25.11.2019, the Official Trustee had inspected the property and there are about 150 houses in that land, out of which, nearly 10% are hut houses, 30% to 40% are constructed houses only in the ground floor and the balance houses seem to be ground and multi-floor building. The occupants of the land, about 75 persons made a request to consider their long periods of residence in that area for deciding the rent for regularisation. Thereafter, about 30 members had come over to the office of the A.G. & O.T. for discussion on that day itself. There was a lengthy discussion about three hours with regard to the regularisation of tenancy and fixation of monthly rent. The land area occupied by the occupants generally varies from 100 Sq.Ft. to 500 Sq.Ft. There are exceptional cases where the occupants retained about more than 500 Sq.Ft. of land. About 80% of the occupants are ready to regularise themselves as tenants as stated by the persons who met the Official Trustee so far.

(i) Based on the guideline value of Rs.3,000/- per Sq.Ft. and out of several rounds of discussion, they have come forward to pay Rs.6/- Sq.Ft., Rs.8/- Sq.Ft. and Rs.10/- Sq.Ft. depending upon the nature of houses. So far, they have been paying the property tax, water tax and water charges and agreed to pay it in future also even after regularisation of tenancy. There is no proper street formed by the occupants to reach their houses. A passage about 4 to 6 feet is

left for common usage. Even that passage is not in a straight and found to be in zig-zag. To measure the area occupied by the occupants, the Official Trustee suggested that a Civil Engineer's assistance be sought and get a report along with plan for fixation of rent. Though they have initially accepted the proposal, but later they stated that some of the occupants have been thinking in a different angle and sending the Engineer to measure the property, may create some hindrances for settlement of tenancy. Thereafter, one of the occupants met the Official Trustee along with her lawyer. Further, yet another lawyer met the Official Trustee and informed him that some of the occupants are meeting the lawyer for further course of action. In such circumstances, the service of the Civil Engineer was stopped. Subsequent thereto, a letter dated 02.12.2019 was sent to the representatives of the occupants narrating the past events and given one more chance for amicable settlement. The notice was received by them and they firmly took a positive view. On 09.12.2019, nearly ten persons of men and women met the A.G. & O.T. with a request to reduce the rent already they agreed. It was not accepted by the Official Trustee. Again, on 13.12.2019, more than 50 persons met the A.G. & O.T. for the same purpose. After discussion, they agreed to pay the rent already arrived and they have given a list of occupants about 131 names who were ready to regularise them as tenants.

(j) The list submitted by the representatives of the occupants show

that the respective land area occupied by them, was measured by them and tentative measurement in Sq.Ft. had been given. They stated that the tentative area given by them may be taken into account for arriving at the rent to be paid by each occupant at present and if at all any excess area is to be found after proper measurement taken by the Civil Engineer within a reasonable period of time, the occupants assured that they will be ready to pay any difference of rent amount thereafter, if any. In this regard, a clause may be incorporated in the rental agreement itself. The representatives of the occupants stated that if the Civil Engineers come to the property before execution of lease agreements, the occupants may make unnecessary problem of hindrance and to avoid the same, they suggested that the land area given by the respective parties, may be taken into consideration at this stage.

(k) Since the houses are not properly built up by laying street to reach the houses by car and emergency vehicles, if any unnatural incident by Act of God or calamity or some fire accident happens, then there may be a problem for rescue and in the given circumstances, the Official Trustee is not way responsible for the same and the occupants are solely responsible for the same, wherein they built up the houses in the Trust property and knowing all the pros and cons, they have come forward to regularise them as tenants. By recording the same, this Court may permit the Official Trustee to regularise them as tenants by way of

order of this Court, considering 40 years of long time dispute that had been settled by way of negotiation and settlements for several rounds of talk between the occupants and the Official Trustee.

(l) There is a community hall of about 400 Sq.Ft. built up by them for common use for functions and ceremonies. The hall consists of ground and first floors with an open terrace covered with AC sheet. There is also electricity connection for the building. It has been maintained by them in common. It may be used by them in common and they may be permitted to pay the electricity charges commonly.

(m) Since the occupants have put up the construction of their own, without any order either from this Court or from the Official Trustee, they have no right to claim any title over the existing superstructure. This legal issue was explained to the occupants and they understood the same. In view of the same, this Court may mention in the order that the occupants have no right to claim title or right over the building as and when the lease agreement is executed. To that aspect, a separate clause would be incorporated in the agreement itself.

(n) The prayer made in this application had been finally accepted by the majority of occupants who attended the meeting. After arriving rent calculation, the total monthly rent would be rounded off to nearest hundred rupees.

(o) So far, about 80% of occupants have come forward to regularise them as tenants. For the remaining occupants, the representatives of the occupants stated that they are also likely to come forward to regularise them as tenants. If the remaining occupants come forward in near future upto March 2020, they may also be considered for regularisation of tenants on the same analogy. If they did not turn up, necessary eviction proceedings would be initiated against them from April 2020 onwards.

(p) Hence, for all the above reasons, the Official Trustee has filed the present Application for the relief stated supra.

3. Considering the detailed information as furnished above by the learned Official Trustee, I am of the opinion that it would be appropriate to permit the Official Trustee to regularise the occupants as prayed for in this Application, so that the Official Trustee can get income for the Trust, since, as on date, there is no income for the Trust property. Therefore, this application is ordered as prayed for with the following observations:

(i) The occupants have no right to claim title or right over the building as and when the lease agreement is executed and in this regard, a separate clause shall be incorporated in the agreement itself.

(ii) The occupants shall use the community hall in common and they shall pay the electricity charges in common.

(iii) So far 80% of occupants have come forward to regularise them as tenants. For the remaining occupants, the representatives of the occupants stated that they will also come forward to regularise them as tenants. If the remaining occupants come forward in the near future upto March 2020, then they shall also be considered for regularisation of tenants on the same analogy. If they did not turn up, necessary eviction proceedings would be initiated against them from April 2020 onwards.

(iv) The initial lease period shall be fixed for 6 years as accepted by the majority of occupants and after arriving at the rent calculation, the total monthly rent shall be rounded off to nearest hundred rupees.

20.12.2019

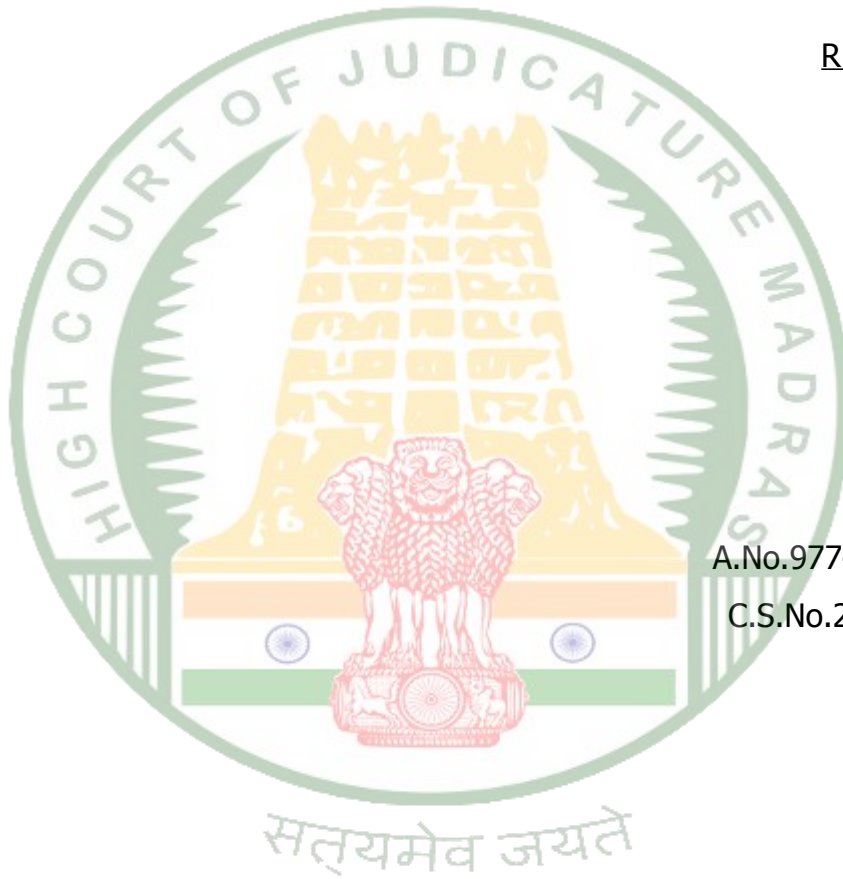
Speaking Order: Yes

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