



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**

W.P. (MD)Nos.8764 and 18288 of 2019

and

W.M.P. (MD)Nos.6815, 6816 and 14732 of 2019

S.Zakir Hussain

: Petitioner in both W.Ps.

Vs.

1.The Estate Officer cum
The Commissioner,
Trichirappalli Municipal Corporation,
Trichy.

2.M.K.Murugan

: Respondents in both W.Ps.

PRAYER in **W.P. (MD)No.8764 of 2019**: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to the impugned order passed by the first respondent in his proceedings Nil dated 06.03.2019 under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 and quash the same as illegal, arbitrary and in violation of principles of natural justice.

PRAYER in **W.P. (MD)No.18288 of 2019**: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to the impugned order passed by the first respondent dated 09.08.2019 under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 and quash the same as illegal, arbitrary and in violation of principles of natural justice.

In both W.Ps.

For Petitioner	: Mr.B.Saravanan
For Respondent No.1	: Mr.N.S.Karthikeyan
For Respondent No.2	: No Appearance

COMMON ORDER

The petitioner's father was given lease in respect of a building at Central Bus Stand, Trichy. He was running a Hotel in the name and style of "M/s.Kannan Hotel". The petitioner's father died on 10.02.1985. Thereafter, the petitioner said to have continued in possession of the leased premises. Since he has not paid the rent, a notice was issued by the Estate Officer to show cause as to why action should not be taken against him for not paying the rental



arrears of Rs.72,28,497/- upto March, 2018. The petitioner has sent a reply on 31.12.2018. Thereafter, he was served with a notice to appear for enquiry before the Estate Officer on 11.02.2019. Since the petitioner did not appear, the Estate Officer, vide order dated 06.03.2019, declared the petitioner as unauthorized occupant in respect of the building in question. Consequent to that, publication was issued in the newspaper by the first respondent for taking possession of the property under Sections 4 and 5 of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975. Subsequently, the first respondent, vide order dated 09.08.2019, directed the petitioner to remove all movable properties from the premises, otherwise, the same will be removed and disposed of by public auction. Challenging those proceedings, the petitioner preferred the present Writ Petitions.

2. Controverting the facts, the learned Standing Counsel appearing for the first respondent would submit that the petitioner has not produced any credentials to prove himself as the legal heir of the lessee. Further, he challenged the notification dated 09.03.2019, locking and sealing his premises, before the Division Bench in W.P.(MD)No.5916 of 2019 and subsequently, withdrew the same on 02.04.2019. The petitioner has initiated civil litigation before the District Munsif Court, Trichy in the year 2003. Pursuant to the decree passed on 02.09.2005, he continues to be in possession of the leased premises. Since the petitioner has not mentioned his address, notice was served on him at the business place at Central Bus Stand, Trichy. The Estate Officer affixed the notice at conspicuous places in the leased premises. Even then, the petitioner has not chosen to file any appeal against the orders passed by the Estate Officer. He rushed to this Court without exhausting the alternative remedy.

3. As of today, the petitioner is liable to pay Rs.88 Lakhs [Rupees Eighty Eight Lakhs only] towards arrears of lease amount. Therefore, the Writ Petitions are not maintainable and sought for dismissal on the ground that they are not maintainable for non-exhaustion of alternative remedy.

4. Heard the submissions.

5. Admittedly, there is an appeal provided under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975, against the order of the Estate Officer. However, it is submitted that such order was served only on 27.03.2019 before this Court, and the petitioner facing imminent threat of eviction, having no other option, could not avail the alternative remedy and filed the present Writ Petitions against the orders of the Estate Officer.

6. I have considered the rival submissions.

7. Since the orders passed by the Estate Officer do not disclose the reasons for ordering eviction, this Court is of the opinion that the impugned orders are liable to be set



aside and the petitioner should be given an opportunity, on clearance of the rental arrears.

8. Accordingly, the orders of the Estate Officer dated 06.03.2019 and 09.08.2019, are set aside and the matter is remitted to the first respondent for fresh consideration. The petitioner shall be given an opportunity to submit his case and personal hearing should be afforded to him. However, he cannot go scot-free, as he has also contributed by committing default. The petitioner will be given this opportunity on condition that he deposits a sum of Rs.40 Lakhs [Rupees Forty Lakhs only] with the first respondent and for the balance amount, he shall provide security of immovable properties standing in his name. On compliance of these conditions, the Estate Officer is directed to fix the date of enquiry and afford an opportunity of personal hearing to the petitioner and thereafter, pass a reasoned order, within a period of two weeks from the date of receipt of a copy of this order. It is open to both parties to follow the further procedures in accordance with law.

9. The Writ Petitions stand allowed as indicated above. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

SML

TO

The Estate Officer cum
The Commissioner,
Trichirappalli Municipal Corporation,
Trichy.

+2CC TO MR.B.SARAVANAN, ADVOCATE, SR NO.100437,100435
+1CC TO MR.N.S.KARTHIKEYAN,ADVOCATE, SR NO 100659

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KK/SAR/05.12.2019/3P-5C/