

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02/01/2020

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

a n d

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.3304 of 2019

R.Mahendran

...

Appellant / Petitioner

Vs

1. The Director (Medical),
E.S.I.Hospital,
K.K.Nagar, 'A' Unit of ESI Corporation,
Ashok Pillar Road, Chennai 600 078.
2. The Director General,
Employees State Insurance Corporation,
Panchdeep Bhavan, Kotla Road,
New Delhi.
3. The Deputy General Manager,
West (O&M K.K.Nagar)
Chennai Telephones,
99. Jawaharlal Nehru Salai,
K.K.Nagar, Chennai - 600 078.

Respondents

Prayer: Writ Appeal has been filed under Clause 15 of Letters of Patent against the order made in W.P.No.24550 of 2004 dated 21.12.2018.

WP.No.24550 of 2004:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for records of the 1st respondent herein, comprised in his impugned notice of removal/vacation, issued in his ref.S1-D-11(2) Genl-Pco (dated 6-8-2004), prepared and signed only on 16-8-2004, quash the same as illegal and without jurisdiction, and consequently forbear the respondents from disturbing or evicting the petitioner from ranning the Telephone Booth quietly ran by him within the E.S.I. Hospital Compound, K.K.Nagar, Chennai-78.

For petitioner ... Mr.R.Sankarasubbu

For Respondents ... Mr.K.M.Venugopal

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J U D G M E N T

(Judgment of the Court was made by Subramonium Prasad,J)

The writ petitioner is the appellant. The appellant seeks to challenge the correctness of the judgment dated 21.12.2018, passed in WP.No.24550 of 2004. The writ petition is one for a Certiorarified Mandamus calling for the records of the notice issued by the Director (Medical), E.S.I. Hospital, K.K.Nagar, Chennai, for removal/vacation of the petitioner who is running a telephone booth within the E.S.I. Hospital compound, K.K.Nagar, and quash the same and consequently restrain the respondents from disturbing or evicting the petitioner.

2. The appellant / writ petitioner suffers from Loco Motor Disability. The petitioner was allotted a space in the E.S.I.Hospital, K.K.Nagar for setting up of telephone booth in the year 1993. The petitioner is running the telephone booth from 1993. The petitioner was served with a notice dated 06.08.2004 and the same was received by him on 16.08.2004, asking him to vacate the premises in view of the decision taken by the E.S.I.Hospital that the place would be allotted to a Physical Handicap person who has been insured under the E.S.I. scheme. During the pendency of the scheme, the petitioner gave his representation stating that he is also a physical handicapped and there should not be any discrimination between Physical Handicap Persons and that he should not be removed from the premises. The petitioner filed WP.No.24550 of 2004. During the pendency of the writ petition, the petitioner was protected by the orders of the Court.

3. The respondents were filed a counter. In the counter, it is stated that the corporation introduced a policy in 2003 to allot PCO booth at various E.S.I. Hospitals only to the Physical Handicap Insured Persons, insured under the E.S.I. scheme. It is stated in the counter that the E.S.I.Hospital at Chennai is following only instructions/policy decisions taken by the Head Office. It is stated in the counter that the petitioner has without any permission increased the area allotted to him. It is also stated that the writ petitioner has not filed any renewal application and has actually sublet the premises to another person for running the telephone booth. It is also alleged in the counter affidavit writ petitioner is also selling various

products at a higher price which is in complete violation of the terms of the allotment letter.

4. The learned Single Judge dismissed the writ petition stating that the notice issued by the Corporation to the writ petitioner for evicting is in accordance with the law and in consonance with the guidelines of Corporation. The learned Single Judge noted the contention of the respondents that the writ petitioner is not even running the PCO and has deputed some persons to occupy the premises. The learned Single Judge also noted the contention that apart from running the booth, many other products are being sold from the booth at a higher cost.

It is this order which is under challenge in the instant writ appeal.

5. Heard the counsel for both the sides and perused the material on record.

6. The writ petitioner is a licensee. He has been permitted to run the PCO shop from the premises of the E.S.I. Hospital, K.K.Nagar, Chennai. The premises was licensed to the petitioner only because he is Physically Handicapped. The petitioner cannot claim any right over the premises other than as a licensee. It is for the E.S.I. Corporation to decide the policy as to whom the place should be allotted. The learned counsel for the respondents has produced a circular dated 29.05.2003, regarding allotment of STD/ISD/PCO booth for Physical Handicap Persons within the premises of E.S.I.Hospitals. The said circular reads as under:-

"To

All the Secretaries to the State Govts.

Subject:- Allotment of STD/ISD/PCO Booth for Physical Handicap persons (Insured Persons of ESIC) in ESI Hospitals.

The matter regarding allotment of STD/ISD/PCO Booth for Physical Handicap Persons (Insured Persons of ESIC) in ESI Hospitals was raised by the members in the various meetings of Corporation. The Hon'ble Labour Minister (Chairman, ESIC) decided that such type of booths should be allotted to disabled ESI Insured Persons only. Accordingly, the terms and conditions for allotment of STD/ISD/PCO Booth for Physical Handicap Persons (Insured Persons of ESIC) in ESI Hospitals are forwarded herewith with the request to forward these terms & conditions to all the ESI hospitals for allotment of booths in their hospitals accordingly."

7. The material on record also shows that the space occupied by the petitioner is also required by the hospital for further construction. Since the petitioner is only a licensee, his license can be terminated by issuing a proper notice. The circular dated 29.05.2003 (supra) shows the change in policy by the E.S.I.C regarding the allotment of STD/ISD/PCO booth. The material also shows that the E.S.I.C hospital at K.K.Nagar is having constraints and they require the land to be put up for other use. In the absence of any right, the petitioner cannot claim that he cannot be evicted from the premises. The petitioner can however be evicted only in accordance with the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The petitioner cannot be evicted without following due process of law. It is trite law that even an unauthorised occupant can be evicted only by following due process of law (refer Express Newspapers Pvt. Ltd. Vs. Union of India, (1986) 1 SCC 133).

8. Since the petitioner has not shown any semblance of right which would entitle him to the relief as prayed in the writ appeal. The Writ Appeal is dismissed. However, it is made clear that the petitioner can be evicted by following the procedure as laid down under the Public Premises (Eviction of Unauthorised Occupations) Act, 1971.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Director (Medical),
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+1cc to Mr.K.M.Venugopal, Advocate SR.124

W.A.No.3304 of 2019

PA(CO)
CB(27/01/2020)



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