

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.No.15381 of 2020 and
W.M.P.No.19238 of 2020

S.A.Venirselvan

...Petitioner

-Vs-

1.The Estate Officer,
'Wakf House', No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.

2.M/s.Ghulam Hussain Mosque,
popularly known as Nagagudi Mosque,
represented by its Vice President,
Mr.Syed Hidayathullah,
No.1, Wallers Road,
Mount Road,
Chennai - 600 002.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus forbearing the respondents from interfering with the petitioner's peaceful possession and enjoyment in respect of the property bearing Old No.7/6, New Door No.10, Richie Street, Sivaprakasam lane, Narasinghapuram, Chintadripet, Chennai - 600 002 till the exhaustion of appeal remedy provided under Section 9 of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 read with Rule 7 of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Rules, 1978 by him.

For Petitioner : Mr.J.Lakshminarayanan

ORDER

[Order of the Court was made by V.PARTHIBAN, J.]

This matter is taken up through Web Hearing.

2.The writ petition is filed seeking issue of writ of

mandamus restraining the respondents from interfering with the petitioner's peaceful possession and enjoyment of the property under his occupation till appeal remedy is exhausted by him under the provisions of Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act.

3.The order of eviction was passed against the petitioner on 12.10.2020 after adjudication by the first respondent, who is the designated Estate Officer. In fact from the records it is found that earlier this petitioner challenged notice issued by the first respondent in W.P.SR.No.3036 of 2020 and this Court has rejected the same as not maintainable on 21.01.2020, against which Writ Appeal was preferred in W.A.No.303 of 2020. However, the same came to be withdrawn on 24.07.2020 at the instance of the petitioner herein that he would agitate the issue before the appropriate forum.

4.Thereafter the matter was adjudicated after contest and finally the first respondent, on conclusion of the proceedings passed an order of eviction on 12.10.2020. The proper course of remedy available to the petitioner is to approach the appropriate forum by invoking the appeal remedy provided under Section 9 of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975. Instead of choosing the appropriate effective appeal remedy, the petitioner has chosen a contrived short-cut to approach this Court and seeking to injunct the respondents from proceeding with the consequential action pursuant to the eviction order dated 12.10.2020.

5.Although, the learned counsel appearing for the petitioner attempted to impress upon the Court that in view of the holidays, the petitioner is unable to approach the appropriate legal forum to avail the appeal remedy under the provisions of the Act. It was also submitted that the time for filing appeal namely 30 days available under the Act was not made available to the petitioner, as the eviction order dated 12.10.2020, directed the petitioner to vacate the scheduled premises within 10 days from the date of order.

6.This Court is unable to appreciate the submissions of the petitioner in order to entertain the writ petition of this nature. Once the appropriate and effective remedy is available under the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 read with Rule 7 of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Rules, 1978, the petitioner has to take recourse to that remedy and not approach this Court by invoking its extraordinary jurisdiction under Article 226 of Constitution of India. Even earlier this Court found that the writ petition was filed at behest of the petitioner and was dismissed as not maintainable

on the ground that petitioner had to choose an appropriate remedy available under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 read with Rule 7 of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Rules, 1978. When such was the case, this Court is unable to comprehend as to how the petitioner can be once again allowed to approach this Court for the same issue and entertain the writ petition. The reasons for approaching this Court as stated by the petitioner do not carry conviction with this Court and in any event, the Constitutional jurisdiction cannot be used as transitory relief while regular appeal is to be filed before appropriate forum under the provisions of the Act.

7. In view of the above, this Court finds that the writ petition is not maintainable and hence dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (VA)

//True Copy//

Sub Assistant Registrar

pns/kst

To

The Estate Officer,
'Wakf House', No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.

W.P.No.15381 of 2020

NR (CO)
GN (28/10/2020)

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