



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (MD)No.1353 of 2017

S.Suresh Kumar

: Petitioner/Appellant

.. Vs ..

The Estate Officer,
V.O.Chidambaranar Port Trust,
Tuticorin.

: Respondent/Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records relating to the fair and decretal order made in C.M.A.No.18 of 2017, dated 21.06.2017 made by the Principal District Judge-cum-Appellate Authority, Thoothukudi and to set aside the same as illegal.

For Petitioner :Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For Respondent :Mr.Veerakathiravan
Senior Counsel
for Mr.A.Arivuchandran

ORDER

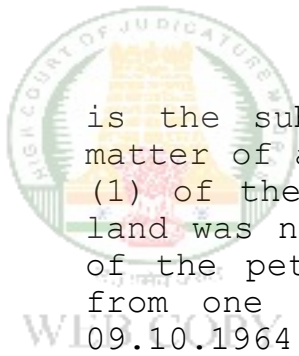
This Civil Revision Petition is directed against the order passed by the learned Principal District Judge-cum-Appellate Authority, Thoothukudi, in C.M.A.No.18 of 2017, dated 21.06.2017, which was, in turn, preferred as against the order of respondent, dated 14.03.2017, purported to have been issued under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act 1971 (hereinafter, referred to as "the Act").

2.Heard the learned Senior Counsel appearing for the petitioner and the learned Senior Counsel appearing for the respondent.

3.The following facts, as borne out from the records, are not in dispute:

4.The property measuring to an extent of 90 cents in S.No.952 in Meelavittan Village, Tuticorin Taluk, Tuticorin District, which

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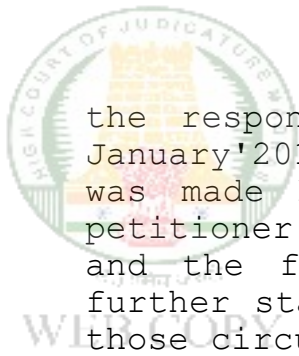
is the subject matter of the revision petition, was the subject matter of acquisition as per the notification issued under Section 4 (1) of the Land Acquisition Act 1894, dated 24.08.1962. After the land was notified for acquisition under the Central Act, the vendor of the petitioner, by name, Abraham Nadar, purchased the property from one Periyannayakkan Nadar, by a registered sale deed, dated 09.10.1964. Thereafter, a draft declaration under Section 6(1) of the Land Acquisition Act 1894, was issued on 24.08.1968.

5.It is not in dispute that the acquisition was completed and the Writ Petitions, which were filed challenging the acquisition proceeding, were dismissed. The fact that the land vested with the V.O.Chidambaranar Port Trust, Tuticorin, pursuant to the acquisition proceedings is not seriously disputed. The petitioner purchased the land measuring to an extent of 90 cents in S.No.952 in Meelavittan Village from Mr.Abraham Nadar by a registered sale deed, dated 07.08.1992.

6.Stating that the officials of the respondent Port Trust made an attempt to interfere with the peaceful possession and enjoyment of the property by the petitioner, the revision petitioner filed a suit in O.S.No.268 of 2016 before the Additional District Munsif Court, Tuticorin, for permanent injunction restraining the respondent herein from interfering with the peaceful possession and enjoyment of the property. It was, thereafter, the respondent issued show cause notice, dated 19.09.2016, under Section 4 of the Act. The respondent, thereafter, passed an order of eviction under Section 5(1) of the Act, dated 06.10.2016. Challenging the show cause notice, dated 19.09.2016 and the order of eviction, dated 06.10.2016, the revision petitioner filed a Writ Petition in W.P. (MD)No.19797 of 2016. In the Writ Petition, this Court was pleased to grant interim order on 14.10.2016.

7.By order dated 03.01.2017, the Writ Petition filed by the revision petitioner in W.P.(MD)No.19797 of 2016 was partly allowed by setting aside the order of eviction and remitting the matter back to the respondent to pass fresh orders on merits. It is to be noted that this Court upheld the show cause notice, dated 19.09.2016. Thereafter, the petitioner filed an appeal as against the portion of order in the Writ Petition upholding the show cause notice, dated 19.09.2016 as legal and valid in W.A.(MD)No.29 of 2017. It was contended by the petitioner in the appeal memorandum that the notice issued by the respondent under Section 4 of the Act does not reflect formation of any opinion as to how the petitioner was found to be an unauthorised occupant and that the notice impugned in the Writ Petition is in violation of Section 4 of the Act, inasmuch as the notice impugned in the Writ Petition does not satisfy or disclose the grounds, on which the eviction was sought for.

8.Even though the Writ Appeal challenging the legality of the show cause notice issued under Section 4 of the Act, was pending,



the respondent proceeded with the enquiry and reserved order in January'2017. It is stated by the petitioner that a representation was made before the Honourable Division Bench on behalf of the petitioner about the enquiry that was conducted by the respondent and the fact that the respondent had reserved orders. It was further stated that the Honourable Division Bench of this Court, in those circumstances, was pleased to dispose of the appeal by holding that the respondent could pass orders on the enquiry and in case, an order of eviction is passed, it would be open to the petitioner to prefer an appeal and place all the points pleaded in the Writ Appeal. Thereafter, the respondent passed an order of eviction under Section 5 of the Act, dated 14.03.2017 holding that the petitioner is an unauthorised occupant.

9.As against the order of eviction passed pursuant to the direction of Honourable Division Bench of this Court, the petitioner preferred an appeal under Section 9 of the Act, in C.M.A.No.18 of 2017 before the Principal District Judge, Tuticorin. The learned Principal District Judge, Tuticorin, dismissed the appeal by order, dated 21.06.2017 holding that the land had been allotted to the respondent for the expansion of Port Trust and that therefore, the revision petitioner is an unauthorised occupant and that he has no defence in the eviction proceedings. As against the order dismissing the appeal preferred by the revision petitioner, the present revision petition is filed.

10.The learned Senior Counsel appearing for the revision petitioner submitted that the Appellate Authority failed to appreciate the main contention that the respondent issued notice under Section 4 of the Act without observing the statutory requirements as contemplated under Section 4 of the Act. The learned Senior Counsel then submitted that the Estate Officer, without forming an opinion that the person in occupation is an unauthorised occupant, cannot proceed to issue notice under Section 4 of the Act. In other words, the learned Senior Counsel submitted that without having any material to form an opinion that the person, against whom notice is issued, is an unauthorised occupant, the respondent has no jurisdiction to initiate proceedings under the Act. The learned Senior Counsel then submitted that the notice under Section 4 of the Act should state the grounds, on which the order of eviction is passed.

11.The learned Senior Counsel submitted that the petitioner has proved his title on the basis of the registered sale deed and that the Appellate Authority assumed title in favour of respondent, merely on the basis of "A" Register, which contains the name of respondent, as registered land owner. The learned Senior Counsel then pressed into service an argument that the petitioner is in continuous possession and enjoyment of the property for more than 65 years and that the Appellate Authority rejected the appeal ignoring



title of respondent cannot be upheld on the basis of revenue records. The learned Senior Counsel for the revision petitioner strenuously contended that the show cause notice does not contain the grounds for eviction.

12.The learned Senior Counsel appearing for the revision petitioner relied upon a judgment of High Court of Jammu and Kashmir rendered by Honourable Division Bench in the case of **Dr.Yash Paul Gupta vs Dr.S.S.Anand and others**, reported in **AIR 1980 J&K 16**. The case before the High Court of Jammu and Kashmir was that a person, who was an A-Grade Physician (Specialist) in the Department of Health and Family Planning, was allotted a Government Hospital Quarters. When the Physician transferred to another Government Hospital, he was called upon to vacate the premises allotted to him. Therefore, a notice was issued under Section 4 of the Public Premises (Eviction of unauthorised Occupants) Act, 1959. When the order of eviction was challenged by the Physician in a Writ Petition, the learned Single Judge dismissed the Writ Petition. The appeal was allowed by the Division Bench. Since the Physician was allotted the premises earlier, the notice describing the Physician as an unauthorised occupant, was held to be invalid, as the High Court of Jammu and Kashmir was of the view that the appellants's possession was originally authorised.

13.The learned Senior Counsel for the revision petitioner further relied upon a judgment of Bombay High Court in the case of **Minoo Framroze Balsara vs Union of India and others**, reported in **AIR 1992 Bombay 375**, wherein, it has been held as follows:

"34. The provisions of the Eviction Act, 1971, can be applied to persons who are in unauthorised occupation of public premises A person, by reason of Section 2(g), is in unauthorised occupation if his occupation is without authority. He is in unauthorised occupation if he continues to occupy public premises after the authority under which he was allowed to occupy the same has expired or has been determined for any reason whatsoever. The provisions of the Eviction Act, 1971, therefore, entitle the Government company or corporation which is the owner of the public premises to terminate for any reason whatsoever the authority of the occupant to occupy the same and, by so doing, place the Government company or corporation and the occupant in the position of landlord and tenant governed by the provisions of the Transfer of Property Act. The provisions of Sections 4 and 5 of the Eviction Act, 1971, deal with the procedure for the eviction of an unauthorised occupant and must be read together. Section 4 prescribes that the unauthorised occupant must be issued with a notice in writing to show cause why an order of eviction should not be passed against him. That notice has to be issued by the Estate Officer provided he is of the opinion that the addressee



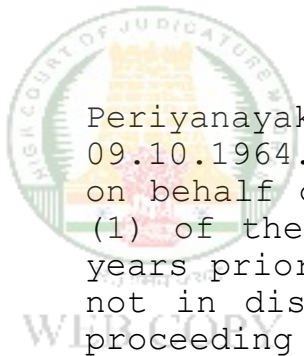
of the notice is in unauthorised occupation of public premises and that he should be evicted. Prima facie satisfaction of the Estate Officer is a sine qua non of the issuance of the show cause notice. The prima facie satisfaction must be two-fold; firstly, that the addressee is in unauthorised occupation of public premises, and, secondly, that, he should be evicted. The notice must set out the grounds on which the order of eviction is proposed to be made. It must, therefore, state not only why the addressee is thought to be in authorised occupation but also why it is thought that he should be evicted. It must inform the addressee that he is entitled to show cause against the proposed order of eviction. The addressee cannot effectively show cause unless he knows why the Estate Officer is of the opinion that he is in unauthorised occupation. He also cannot show effective cause unless he knows why his eviction is proposed. The provisions of Section 4 make it clear that the addressee may seek a personal hearing from the Estate Officer and may lead evidence for the purposes of showing cause against the proposed order of eviction. This is clear also from the provisions of Section 8 which vest in the Estate Officer the powers of a Civil Court in regard to the summoning of witnesses and examining them on oath and the discovery and production of documents."

14.The learned Senior Counsel relying upon a judgment of this Court in the case of **N.Govindan vs The Chief Personnel Officer, I.C.F., Madras and another**, reported in 1999 (III) CTC 588, contended that the notice under Section 4 of the Act is defective. The facts of the said case is entirely different and hence, it is not worthwhile to refer to this case.

15.The learned Senior Counsel for the revision petitioner further relied upon an unreported judgment of learned Single Judge of this Court in **W.P. (MD)No.12563 of 2018** in the case of **G.Rajesh vs The Estate Officer-cum-Municipal Commissioner, Nagercoil Municipality, Kanyakumari District**, wherein, it has been held that it is mandatory to set out the grounds and set out the reasons for the eviction, on which the order of eviction is proposed to be made.

16.The learned Senior Counsel appearing for the respondent then made his submission by referring to the previous proceedings and reiterated that by the observations of Honourable Division Bench in his Writ Appeal would enable him to challenge the order of eviction on the ground that the notice under Section 4 of the Act itself is defective.

17.The property, which is the subject matter of the proceedings, was the property of one Periyannayakan Nadar. The said



Periyanayakkan Nadar sold the property to one Abraham Nadar only on 09.10.1964. However, the land was acquired for the public purpose on behalf of the respondent by issuing notification under Section 4 (1) of the Land Acquisition Act even in the year 1962, at least 2 years prior to the sale in favour of the petitioner's vendor. It is not in dispute that the State of Tamil Nadu initiated acquisition proceeding for acquisition of land about 4865.05 Acres of land for the industrial development in the year 1962. The property, which is the subject matter of the proceedings, was also acquired along with an extent of 973 acres of land in Meelavittan Village by issuing notice under Section 4(1) of the Land Acquisition Act, dated 24.08.1962. A draft declaration under Section 6(1) of the Act was issued by stating that the lands are acquired for the industrial development of Tuticorin Harbour.

18.Periyanayakan Nadar, the vendor of petitioner's vendor, was one among the four sons of one Pon Samuel Nadar. From the details of ownership over the entire land in S.No.952, it cannot be disputed that the entire land vested with the respondent pursuant to the acquisition and delivery of property by the Land Acquisition Officer to the respondent Port Trust. It is also admitted before this Court that the petitioner's predecessor-in-title challenged the acquisition proceeding by way of Writ Petition and that the same was dismissed on merits. By this advent of land acquisition proceedings, the petitioner, who purchased the property long after the notification issued under Section 4(1) of the Act, cannot claim title, though the declaration and further proceedings are subsequent to the notification under Section 4(1) of the Act. Upon declaration under Section 6 of the Act and taking possession of the lands acquired, the title vested with the Government. When the petitioner's predecessor-in-interest, who came to challenge the acquisition and made an attempt to quash the notification at that time, did not prosecute after the Writ Petition was dismissed. The purchaser of the property cannot claim any better right than the owner himself. Merely because, the petitioner purchased the property in 1992, he cannot get a better right than his vendor himself, after the land acquisition proceeding has become final. As a matter of fact, the petitioner's vendor had no title to convey in 1992 and therefore, the sale deed is void as against the Port Trust.

19.The petitioner admitted that he has filed a suit in O.S.No.268 of 2018 before the Additional District Munsif Court, Tuticorin, for permanent injunction restraining the Port Trust from interfering with the peaceful possession and enjoyment of the property. The suit cannot come in the way of respondent in exercising his statutory duty to evict every unauthorised occupant from the public premises. The petitioner is an encroacher and he cannot dispute the title of respondent. The Estate Officer is a designated authority under the Act to perform the function as contemplated under Sections 4 and 5 of the Act. When the property



proceedings initiated for evicting the petitioner cannot be defended by the petitioner on the basis of a subsequent sale deed obtained in the year 1992 from a person, who had no title to convey.

20. The fact that the petitioner is an unauthorised occupant is evident from the records. From the admitted facts regarding acquisition of land for and on behalf of M/s.V.O.Chidambaranar Port Trust, the stale claim by the petitioner on the basis of a sale deed executed by a person, is nothing but an attempt to put a clock back with ulterior motive and without *bona fides*. Sections 4 and 5 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, read as follows:

"4. Issue of notice to show cause against order of eviction.—1[(1) If the estate officer has information that any person is in unauthorised occupation of any public premises and that he should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing within seven working days from the date of receipt of the information regarding the unauthorised occupation calling upon the person concerned to show cause why an order of eviction should not be made.

(1A) If the estate officer knows or has reasons to believe that any person is in unauthorised occupation of the public premises, then, without prejudice to the provisions of sub-section (1), he shall forthwith issue a notice in writing calling upon the person concerned to show cause why an order of eviction should not be made.

(1B) Any delay in issuing a notice referred to in sub-sections (1) and (1A) shall not vitiate the proceedings under this Act.]

(2) The notice shall—

(a) specify the grounds on which the order of eviction is proposed to be made; and

[(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises,—

(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not 3[later than] seven days from the date of issue thereof, and

(ii) to appear before the estate officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.]

(3) The estate officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises, and in such other manner as may be prescribed, whereupon the notice



shall be deemed to have been duly given to all persons concerned.

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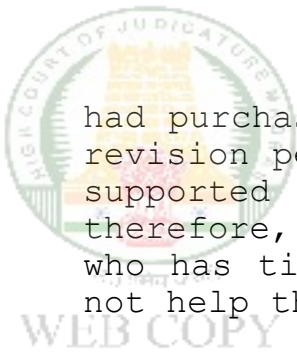
5. Eviction of unauthorised occupants.—5[(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under sub-clause (ii) of clause (b) of sub-section (2) of section 4, the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer shall make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order but not later than fifteen days from the date of the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises:

Provided that every order under this sub-section shall be made by the estate officer as expeditiously as possible and all endeavour shall be made by him to issue the order within fifteen days of the date specified in the notice under sub-section (1) or sub-section (1A), as the case may be, of section 4.]

(2) If any person refuses or fails to comply with the order of eviction [on or before the date specified in the said order or within fifteen days of the date of its publication under sub-section (1), whichever is later,] the estate officer or any other officer duly authorised by the estate officer in this behalf 7[may after the date so specified or after the expiry of the period aforesaid, whichever is later, evict that person] from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary.

[Provided that if the estate officer is satisfied, for reasons to be recorded in writing, that there exists any compelling reason which prevents the person from vacating the premises within fifteen days, the estate officer may grant another fifteen days from the date of expiry of the order under sub-section (1) to the person to vacate the premises.]”

21.A person, who is in unauthorised occupation, is also defined under the Act. The facts that the petitioner has purchased the property from a person, who had no title and that the property had been acquired on behalf of respondent in 1962 are established. The petitioner claims title even now before this Court on the basis of a sale deed, which was obtained in the year 1992 from a person, who



had purchased the property in the year 1964. The contention of the revision petitioner that he is in possession for a long time is not supported by any materials. The property is a vacant land and therefore, physical possession can be presumed to be with a person, who has title. Even if the petitioner is in possession, that does not help the petitioner to resist eviction.

22.In the present case, the petitioner has filed the suit claiming that he is the owner of the property. The Estate Officer has reasons to believe that the property has vested with the Port Trust pursuant to the acquisition of the property from the petitioner's predecessor-in-interest. When the property is encroached by a person, who claims independent right or title over the property, it is the duty of the Estate Officer to treat this as unauthorised. Hence, the subjective satisfaction of the Estate Officer to form an opinion cannot be disputed in this case. The petitioner is not only an unauthorised occupant, but the case should be taken seriously as the encroacher has now set up title in himself on the basis of his possession. When a third party sets up title in respect of the property, the Estate Officer cannot sleep or cannot wait to initiate action for eviction or to gather material to form an opinion, whether the petitioner is liable to be evicted or not.

23.The object and intention of the legislation cannot be understood or interpreted differently to enable the encroacher to circumvent the rigour of the Act. The very object of the enactment was to resort to initiate eviction proceeding with the limited procedure to avoid going to Civil Court. The petitioner has claimed right under a person who lost his title to the property, after its acquisition. In that way, the petitioner is bound by verdict as against his predecessor-in-interest in the Writ Petition. The petitioner's vendor had challenged the acquisition in a Writ Petition in W.P.No.2346 of 1973. The said Writ Petition was dismissed along with the batch of Writ Petitions. After the acquisition and after the dismissal of the Writ Petition in January 1975, challenging the acquisition, the property was sold by the petitioner's vendor in favour of the petitioner. The petitioner cannot assume better title than his vendor, while claiming title to the property. The petitioner is bound by the earlier order passed by this Court in the Writ Petition. The petitioner's possession on the basis of sale deed obtained from a person, who lost his title to the property, after its acquisition, cannot cloth him with title. In such circumstances, this Court has no reason to doubt the *bona fide* in taking action against the petitioner under the provisions of the Act. As pointed out earlier, this Court is fully convinced that the procedure contemplated under the Act is followed and there is no irregularity or illegality in the order of eviction.

24.As a result, this Civil Revision Petition is dismissed as <https://hcservices.courts.gov.in/hcservices/> ~~services~~. The order passed by the learned Principal



District Judge-cum-Appellate Authority, Thoothukudi, in C.M.A.No.18 of 2017, dated 21.06.2017, is confirmed. No costs.

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Sd/-

Assistant Registrar (CS-II)

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Principal District Judge-
cum-Appellate Authority, Thoothukudi.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.(2 Copies)

+1 CC to M/s.A. ARIVUCHANDRAN, Advocate (SR-15466[F] dated 01/09/2020)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-15485[F] dated 01/09/2020)

Order made in
C.R.P. (MD)No.1353 of 2017

31.08.2020

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