

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. Nos.797 & 3592 of 2021
and
W.M.P.Nos. 2774, 860, 861,
4101 & 4104 of 2021

W.P.No.797 of 2021

Kaligi Ranganathan J.J. Educational Trust,
Rep by its Secretary & Trustee
R.J.Thayumanaswamy
No.9, Anandavelu Street,
Chennai - 600 011 ... Petitioner

Vs

1.Union of India,
Ministry of Home Affairs,
Rep by Secretary to Government of India,
2nd Floor, NDCC-II Building,
Jai Singh Road, New Delhi.

2.The Custodian of Enemy Property,
Ministry of Home Affairs,
East Wing, 1st Floor,
Shivaji Stadium,
New Delhi - 110 001. ... Respondents

W.P.No.3592 of 2021

Kaligi Ranganathan J.J. Educational Trust,
Rep by its Secretary & Trustee
R.J.Thayumanaswamy
No.9, Anandavelu Street,
Chennai - 600 011 ... Petitioner

Vs

1.Union of India,
Ministry of Home Affairs,
Rep by Secretary to Government of India,
2nd Floor, NDCC-II Building,
Jai Singh Road, New Delhi.

2.The Custodian of Enemy Property,
Ministry of Home Affairs,
East Wing, 1st Floor,
Shivaji Stadium,
New Delhi - 110 001.

3.The Assistant Custodian of Enemy Property,
Ministry of Home Affairs,
Mumbai Branch Office,
Kaiser I - Hind Building
Currimbhoy Road, Ballard
Estate, Mumbai - 400 038

... Respondents

Prayer in W.P.No.797 of 2021 :- Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the 2nd respondent to renew lease of the property bearing T.S.No.32/1 (Part), Block No.11, Sembiam Village, Perambur-Purasawalkam Taluk, Chennai District, measuring an extent of 17 Grounds and 1743 Sq.ft and passage measuring extent of 2 Grounds 1174 Sq.ft in favour of the petitioner pending consideration sale proposal and consequently forebear the respondent from evicting the petitioner from the property bearing T.S.No.32/1 (Part), Block No.11, Sembiam Village, Perambur-Purasawalkam Taluk, Chennai District measuring an extent of 17 Grounds and 1743 sq.ft and passage measuring extent of 2 Grounds 1174 sq.ft pending disposal of the petitioner's sale proposal.

Prayer in W.P.No.3592 of 2021 :- Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records relating to the sealing notice passed by the 3rd respondent in Order dated 08.01.2021, quash the same and consequently directing the respondents to de-seal the premises bearing T.S.No.32/1 (Part), Block No.11, Sembiam Village, Perambur-Purasawalkam Taluk, Chennai District, measuring an extent of 17 Grounds and 1743 Sq.ft comprising of Ground + 1st floor school building having 49 rooms Principal room - 01, office rooms - 02, Parents waiting hall- 02, Medical - 01, NCC- 02, Scout - 01, Labs - 5, Class rooms - 30, Rest rooms - 05.

For petitioner in both W.Ps ... Mr.C.Vigneswaran
For Respondents in both W.Ps ... Mr.K.Srinivasamurthy

COMMON ORDER

These Writ Petitions have been filed seeking for the following reliefs :

W.P.No.797 of 2021 has been filed by the petitioner seeking for a mandamus to renew the lease of the property bearing T.S.No.32/1 (Part), Block

No.11, Sembiam Village, Perambur-Purasawalkam Taluk, Chennai District measuring an extent of 17 Grounds and 1743 Sq.ft and passage measuring an extent of 2 Grounds 1174 Sq.ft pending consideration of the sale proposal made by the petitioner under the Enemy Property Rules, 2015 and consequently forbear the respondents from evicting the petitioner from the aforementioned property pending disposal of the petitioner's sale proposal.

W.P.No.3592 of 2021 has been filed challenging the order dated 08.01.2021 passed by the third respondent by which the aforementioned property was sealed and according to the petitioner, the aforementioned property premises of Ground + 1st Floor school building having 49 rooms Principal room - 01, office rooms - 02, Parents waiting hall- 02, Medical - 01, NCC- 02, Scout - 01, Labs - 5, Class rooms - 30, Rest rooms - 05.

2. Since, the issue involved in both these Writ Petitions arises out of the lease granted to the petitioner by the second respondent, both the Writ Petitions are disposed of by a common order.

3. The petitioner/Trust is running a school in the aforementioned property. Apart from the aforementioned property, there are two other portions, which are also occupied by the school and it is measuring about 13 Grounds. Insofar as these Writ Petitions are concerned, it pertains only to the aforementioned property measuring 17 Grounds and 1743 Sq.ft. The petitioner has entered into a lease agreement with the second respondent in respect of the aforementioned property. Originally, the lease agreement was entered into on 16.12.2014 which was valid upto the year 2017 and thereafter, another lease agreement was entered into on 18.09.2017 which got expired on 08.09.2020. In the lease agreement dated 18.09.2017 referred to supra, the petitioner has agreed to handover vacant possession of the property on the expiry of the lease. The petitioner has given a representation on 09.11.2020 to the second respondent offering to purchase the property as per the guidelines for the Disposal of the Enemy Property Order 2018. Under the said guidelines, Rule 9(2) enables the petitioner to give an offer for purchase of the property, which was earlier leased to them.

4. According to the petitioner, even before considering its representation offering to purchase the property, the second respondent has sealed the petitioner's premises arbitrarily without any prior notice on 08.01.2021. In these Writ Petitions, the petitioner has sought for renewal of the lease and has also challenged the sealing of the petitioner's premises by the second respondent on 08.01.2021.

5. A counter affidavit has been filed by the respondents 1 and 2 wherein, they have stated that the Central Government has taken a policy decision that in future, they do not have plans to grant renewal of the lease that has been given under the Enemy Property Act 1968. With regard to the sale of the property to the petitioner is concerned, they have stated that any sale cannot be by way of a private negotiation. According to them, it is for the Disposal Committee under Section 8(A) of the Enemy Property (Amendment and Validation) Act 2017 to decide on the representation given by the petitioner offering to purchase the property. Therefore, according to them, the petitioner's claim that they should be permitted to remain in the property till the sale proposal is decided is untenable. They have also stated that the petitioner is currently in possession of the adjacent immovable property being vacant land bearing T.S.No.32/1 (Part), Block No.11, Sembiam Village, Perambur-Purasawalkam Taluk, Chennai District - 600 011, measuring an extent of 13 Grounds 757 Sq.ft under the lease agreement dated 01.08.2019 with the second respondent for a period of three years, which is valid upto 31.07.2022 at an annual rent of Rs.6,70,800/- (Rupees Six Lakhs Seventy Thousand Eight Hundred only). Therefore, according to them, the petitioner can utilize the same for their school. According to them, since the petitioner has undertaken to vacate the property under the lease agreement, the second respondent cannot give back possession of the property to the petitioner.

6. Heard Mr.C.Vigneswaran, learned counsel appearing for the petitioner and Mr.K.Srinivasamurthy, learned counsel appearing for the respondents.

7. The learned counsel for the petitioner drew the attention to this Court to Rule 14 Enemy Property Rules and would submit that even if the petitioner is considered as an unauthorized occupant as per the aforesaid Rule, a notice will have to be issued to them by the second respondent, and only thereafter, the second respondent can seal the petitioner's premises. However, according to them, without following the due procedure contemplated under Rule 14, the second respondent has sealed the premises of the petitioner on 08.01.2021. The learned counsel for the petitioner drew the attention of this Court to the guidelines for the Disposal of the Enemy Property Order 2018 and in particular, he referred Rule 9 therein and would submit that the second respondent is empowered to sell the property to the existing occupier. According to him, the petitioner having given an offer to purchase the property as early as on 09.11.2020 and even without considering the same, the second respondent has arbitrarily sealed the premises of the petitioner. He would also submit that the petitioner/Trust is running a school in the sealed premises and several class rooms, office rooms/labs have been sealed arbitrarily by the respondents. Hence, the learned counsel for the petitioner would plead before this

Court that the premises has to be de-sealed to enable the petitioner to run the school. Further, he would submit that being a recognized CBSE Institution, land and building requirements are essential for continuing with affiliation.

8. Per contra, the learned Senior Central Government Standing Counsel for the respondents would submit that a policy decision has been taken by the Central Government not to renew any lease which has got expired under the Enemy Property Act. He would also submit that it is for the Disposal Committee under Rule 9 of the Enemy Property Order, 2018, to decide the petitioner's representation seeking for purchase of the sealed premises. If the petitioner is interested to purchase the property, they along with others can also participate as and when any notification is issued by the Disposal Committee. According to him, as a matter of right, the petitioner cannot purchase the property. The learned Standing Counsel drew the attention to this Court to the lease agreements entered into between the petitioner and the second respondent, wherein, the petitioner has given an undertaking that on expiry of the lease, they shall vacate the premises. According to him, despite the said undertaking, the petitioner has filed these Writ Petitions, which according to him, are not maintainable.

9. According to him, the petitioner is squatting upon the property and only in public interest, the premises of the petitioner was sealed. He would also submit that the representation given by the petitioner dated 16.10.2020 for purchase of the property to the first respondent will be placed before the Disposal Committee.

Discussion

10. It is not in dispute that the lease agreement entered into between the petitioner and the second respondent has come to an end on 08.09.2020. Under Clause 4 of the lease agreement, the petitioner has undertaken to handover vacant possession to the second respondent on the expiry of the lease.

11. The learned counsel for the petitioner drew the attention of this Court to Rule 14 of the Enemy Property Rules 2015, in support of the petitioner's case. Rule 14 of the Enemy Property Rules 2015 reads as follows :

"14. Unauthorized occupant :- If any occupant of the enemy property repeatedly defaults in paying rent or refuse to pay rent, the District authority, in consultation with the Custodian, may take steps to terminate the lease or evict the occupant forthwith.

Provided that before evicting a person or terminating the lease under this Rule, a notice shall be issued to the occupant :

Provided further that it may be open to the Custodian to initiate criminal proceedings against such occupation under the relevant laws for the time being in force"

12. As far as the aforementioned Rule is concerned, it relates to cases where the lease has not come to an end and where the tenants had committed repeated default in payment of rents. Rule 14 does not get attracted for the facts of the instant case. Admittedly, in the case on hand, the lease has got expired. Only in cases, where the lease has not got expired and the tenants are in occupation and have repeatedly committed default in payment of rent, there is a necessity for the second respondent to issue notice before sealing the premises. Therefore, in the instant case, the question of giving prior notice to the petitioner before sealing the premises will not arise, as the lease has already come to an end.

13. With regard to the second contention raised by the learned counsel for the petitioner that even before the representation given by the petitioner seeking to purchase the property was considered, the second respondent has abruptly and illegally sealed the premises is concerned, the said submission also will have to be rejected, in view of the fact that the lease has already come to an end. The guidelines for the Disposal of Enemy Property Order, 2018, which have been issued exercising the powers conferred under Sub-section (6) of Section 8A of the Enemy Property Act 1968 also does not stipulate that only after considering the representation given by any lessee under the Enemy Property Act seeking to purchase the property, the premises of the lessee can be sealed. Rule 9 of guidelines of the Disposal of Enemy Property Order reads as follows :-

"9. Sale of immovable enemy property :- (i) In case of vacant immovable enemy property, the Custodian or any authorised body may sell the property, in one or more lots to secure maximum sale price, with the prior approval of the Central Government, by any one of the following methods, namely :-

- (a) by obtaining quotations from the persons interested in buying the immovable property ; or
- (b) by inviting tenders from the public (including through e-mode) ; or
- (c) by holding public auction ; or
- (d) by any other method of sale ; or
- (e) by engaging a professional body for sale of the property.

(2) In case of occupied enemy property, the Custodian shall sell the property to the existing occupier or otherwise as may be decided by the Central Government and at the rate as determined by the Enemy Property Disposal Committee.

(3) On receipt of the sale price of the property, the Custodian shall issue a certificate to the purchaser in APPENDIX-A."

14. Insofar as the petitioner's case is concerned, Clause 2 of Rule 9 applies as it is an occupant of an enemy property. As per the Rule 9(2), the second respondent is empowered to sell the property to the existing occupier or otherwise as may be decided by the Central Government and at the rate as determined by the Enemy Property Disposal Committee. The petitioner has given a representation on 09.11.2020 to the first respondent, who in turn, will have to place the petitioner's representation before the Disposal Committee as per guideline 9(2) of the Disposal of the Enemy Property Order, 2018 referred to supra. The guidelines Order, 2018 referred to above does not prohibit the second respondent to take possession of the property on the expiry of the lease pending consideration of the sale proposal. However, the petitioner's interest with regard to their intention to purchase the property which was earlier under their occupation will have to be protected till the representation dated 09.11.2020 of the petitioner to purchase the property is considered by the respondents.

15. Admittedly, the petitioner is running a school having approximately 3900 students. According to the petitioner, the school may lose its CBSE affiliation if the subject property is taken over by the respondents. As seen from the prayer in these Writ Petitions, the sealed premises include class rooms, labs, and rest rooms, waiting room and other important rooms for running of the school.

16. This Court is of the considered view that till the petitioner's representation seeking for purchasing the sealed premises from the second respondent is considered on merits and in accordance with law, Status-quo as on date shall be maintained by the respondents with regard to the sealed premises.

17. It is also just necessary that this Court also deems it fit to direct the first respondent to consider the petitioner's representation dated 09.11.2020 seeking to purchase the sealed premises under the guidelines for the Disposal of the Enemy Property Order, 2018 and pass final orders on merits and in accordance with law within a time frame to be fixed by this Court.

18. For the forgoing reasons, insofar as the relief sought for in W.P.No.3592 of 2021 is concerned, there is no merit in the Writ Petition as neither the Enemy Property Act nor guidelines for the Disposal of the Enemy Property Order, 2018 enable the petitioner to retain possession of the property even after the expiry of the lease and there is also no necessity for the second respondent to issue notice to the petitioner prior to sealing the petitioner's premises under Rule 14 of Enemy Property Rules 2015 on the expiry of the lease. However, insofar as W.P.No.797 of 2021 is concerned, the petitioner is interest with regard to purchase of the property which has been sealed by the respondent has to be protected till the petitioner's representation dated 09.11.2020 to the first respondent is considered by the Disposal Committee as per guidelines 9(2) of the Disposal of the Enemy Property Order, 2018 is considered on merits and in accordance with law.

19. In the result, this Court directs the first respondent to consider the petitioner's representation dated 09.11.2020 seeking for purchase of the sealed premises T.S.No.32/1 (Part), Block No.11, Sembiam Village, Perambur, Purasawalkam Taluk, Chennai District and pass final orders on merits and in accordance with law, within a period of one year from the date of receipt of a copy of this order, after affording a fair hearing to the petitioner including granting them the right of personal hearing. Accordingly, W.P.No.797 of 2021 is disposed of.

20. Insofar as W.P.No.3592 of 2021 is concerned as indicated above, there is no merit in the same and accordingly the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government of India,
Union of India,
Ministry of Home Affairs,
2nd Floor, NDCC-II Building,
Jai Singh Road,
New Delhi.

2.The Custodian of Enemy Property,
Ministry of Home Affairs,
East Wing, 1st Floor,
Shivaji Stadium,
New Delhi - 110 001.

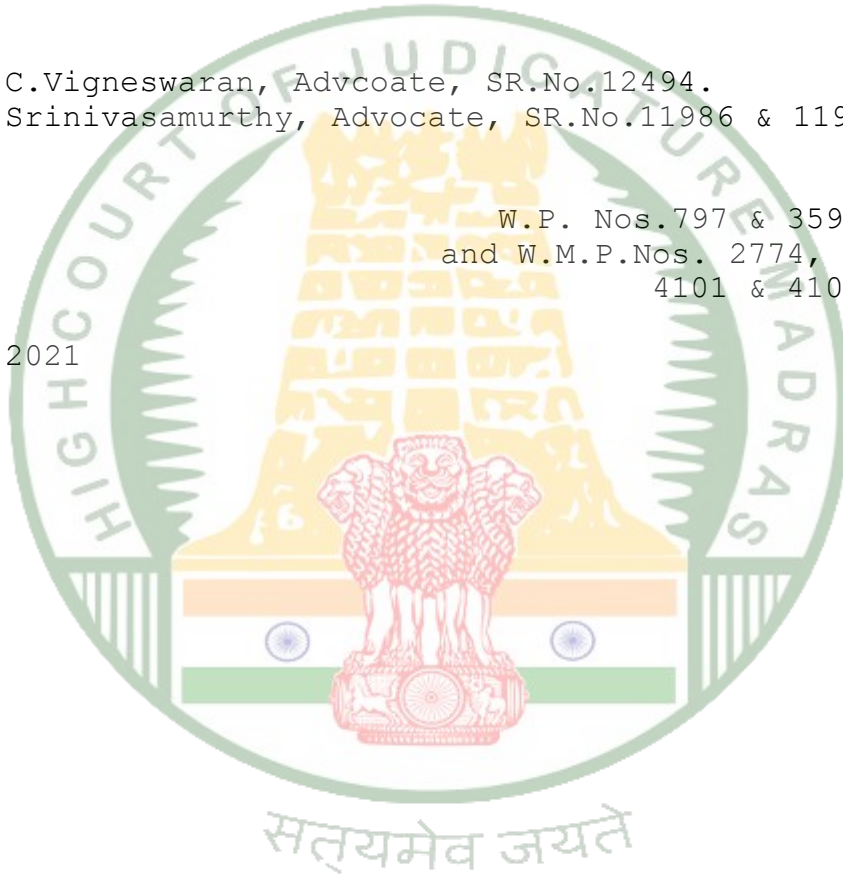
3.The Assistant Custodian of Enemy Property,
Ministry of Home Affairs,
Mumbai Branch Office,
Kaiser I - Hind Building
Currimbhoy Road, Ballard
Estate, Mumbai - 400 038.

+1cc to M.C.Vigneswaran, Advcoate, SR.No.12494.

+2cc to K.Srinivasamurthy, Advocate, SR.No.11986 & 11987.

W.P. Nos.797 & 3592 of 2021
and W.M.P.Nos. 2774, 860, 861,
4101 & 4104 of 2021

SV(CO)
CSR 24.03.2021



WEB COPY