

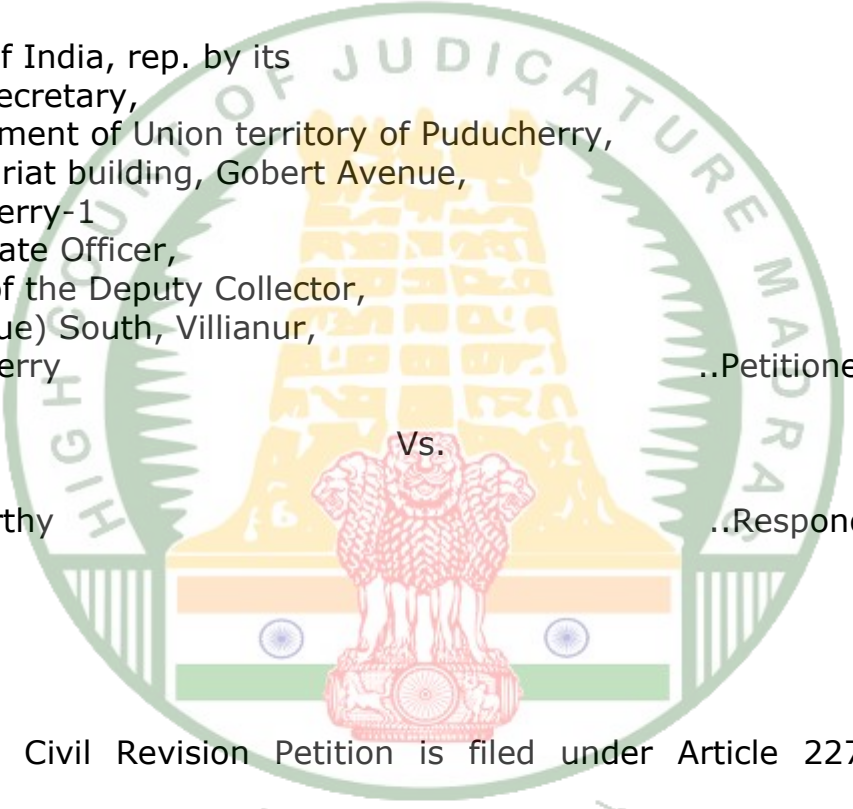
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.3792 of 2015 and
MP.No.1 of 2015

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- 1.Union of India, rep. by its
Chief Secretary,
Government of Union territory of Puducherry,
Secretariat building, Gobert Avenue,
Puducherry-1
2.The Estate Officer,
Office of the Deputy Collector,
(Revenue) South, Villianur,
Puducherry
- ..Petitioners
- Vs.
- Ramamurthy
- ..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 17.12.2014 in MA.No.25 of 2013 on the file of the III Additional District Judge, Puducherry by allowing the same.

For Petitioners

: Mr.G.D.Jearany,
for Government Pleader for
Puducherry

For Respondent

: Mr.R.Sunilkumar

ORDER

The civil revision petition is arising out of the order passed in MA.No.25 of 2013 dated 17.12.2014 on the file of the III Additional District Judge, Puducherry thereby set aside the order passed by the petitioners under sub section (2) of 5-A of the Public Premises (Eviction of Unauthorised Occupants), Act 1971.

2. The petitioners issued show cause notice dated 17.07.2013 call upon the respondent as to why an order of eviction should not be made on encroachment of Government land comprised in RS.No.32/7 of Utchimedu Revenue Village and construction of compound wall, underground storage tank and borewall in that encroach portion. On receipt of the same, the respondent submitted reply dated 24.07.2013. On receipt of the same, the petitioners have passed an order of eviction dated 04.09.2013 on the ground that the encroached portion is Government land as per the Government records. On measurement it is ascertained that the respondent has encroached 1420 sq. feet in the Government land comprised in RS.No.32/7. Aggrieved by the same, the respondent filed an appeal before the III Additional District Judge, Puducherry in MA.No.25 of 2013 under section 9 of the Public Premises (Eviction of Unauthorised Occupants)

Act. The court below set aside the order and allowed the appeal filed by the respondent. Aggrieved by the same, the petitioners preferred this civil revision petition.

3. The only point raised by the learned counsel for the petitioners is that appeal would not lie under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 before the learned District Court. In support of her contention, she also cited Full Bench judgment of Allahabad High Court passed in the case of **Yogesh Agarwal Vs. Estate Officer and two others** on 12.01.2016, wherein it is held as follows:

Section 5A and Section 5B hence operate in different situations. The Statement of Objects and Reasons accompanying the Act 61 of 1980 which introduced Sections 5A, 5B and 5C indicates that the purpose of the amendment was to overcome the difficulties which have been experienced in the working of the Act and to make the administration of the Act more effective. This was, inter-alia, by "including suitable provisions in the Act to deal with squatting, or spreading of goods and removal of unauthorised constructions or encroachments on public premises."26. Where the erection of a construction or the execution of any work is by a person who is in occupation of public premises under an authority but the work is found to be contrary to the terms of the authority or in breach of the authority, it is Section 5B which covers such a situation. The legislature in its wisdom provided for an appeal against

an order of eviction under [Section 5](#). The legislature provided for an appeal against an order under [Section 5B](#). An appeal has also been provided against an order under [Section 5C](#). [Section 5C](#) deals with the power to seal unauthorised constructions. [Section 7](#) provides for the recovery of rent or damages and an appeal is provided against an order passed under that Section. However, the legislature not having provided an appeal under [Section 9](#) in respect of an order passed under [Section 5A](#), an appeal against an order under [Section 5A](#) would not be maintainable.

Accordingly, the legislature not having provided any appeal Section 9 in respect of an order passed under Section 5A of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the appeal against an order under Section 5A would not be maintainable. The Hon'ble Full Bench of Allahabad High Court also held this exercise is impermissible. Moreover, even though an appeal has not been provided against an order under [Section 5A](#), the legality of such an order is subject to judicial review under [Article 226](#) of the Constitution.

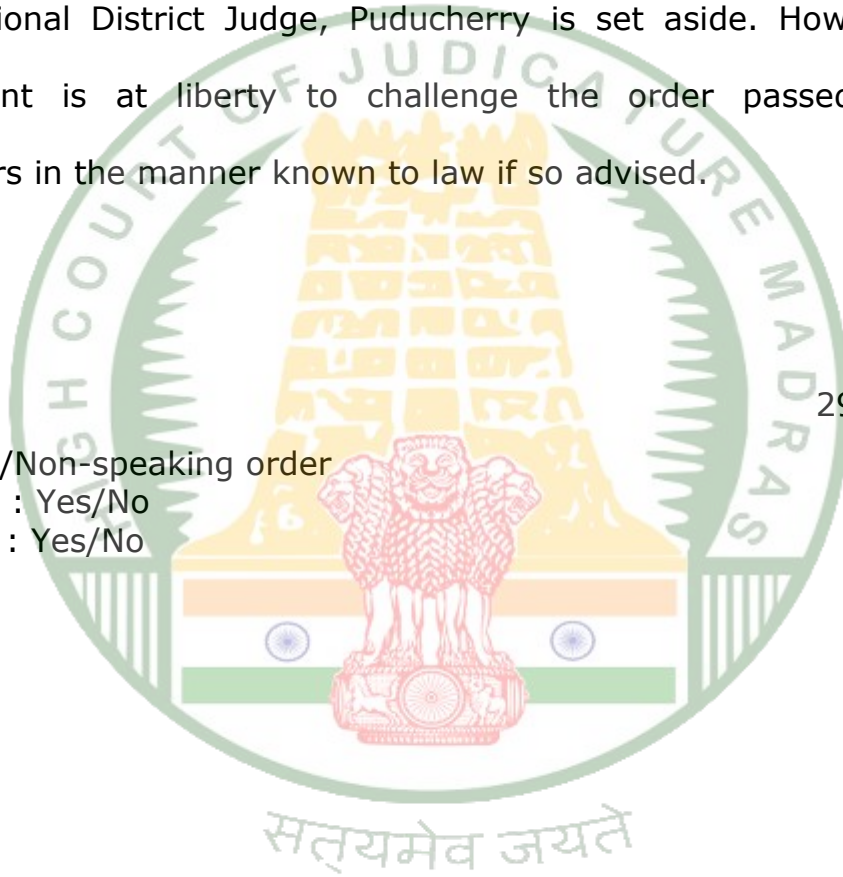
4. In the case on hand, under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the respondent preferred appeal as against the order passed under sub section (2) of 5-A of the Public Premises (Eviction of Unauthorised Occupants), Act 1971 and the same was allowed by the court below. When the appeal itself would not be maintainable under Section 9 of

the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the order passed by the court below is liable to be set aside.

5. Accordingly, the civil revision petition is allowed and the order passed in MA.No.25 of 2013 dated 17.12.2014 on the file of the III Additional District Judge, Puducherry is set aside. However, the respondent is at liberty to challenge the order passed by the petitioners in the manner known to law if so advised.

29.01.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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G.K.ILANTHIRAIYAN,J.

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To

The III Additional District Judge,
Puducherry



CRP.PD.No.3792 of 2015

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