



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	13.07.2021
Delivered on	23 .07.2021

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MS.JUSTICE R.N.MANJULA

W.A.Nos.1142 & 1146 of of 2021
and C.M.P.No.7192 of 2021

Kaligi Ranganathan J.J.Educational Trust,
rep. by its Secretary & Managing Trustee,
R.J.Thayaumanaswamy ... Appellant in both
Writ Appeals

Vs.

1.Union of India,
Ministry of Home Affairs,
rep. by Secretary to Government of India,
2nd Floor, NDCC II Building,
Jai Singh Road, NewDelhi.

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

.... 1st & 2nd Respondents in
both Writ Appeals

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.

...3rd Respondent
WA.No.1146/2021

Prayer: Writ Appeals are filed under Clause 15 of the Letters Patent, against the common order passed by the learned single Judge dated 26.02.2021 in W.P.Nos.797 and 3592 of 2021.

Prayer in WP.No.797 of 2021 : Writ of Mandamus or any other appropriate Writ, Order or Direction 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 and pass such further or other orders as may be deemed fit and proper."

Prayer in WP.No.3592 of 2021: Writ of Ceritiorarified Mandamus or any other appropriate Writ, Order or Direction 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, Classrooms -30, Rest Rooms -05, and pass such further or other orders as may be deemed fit.

For Appellant .. Mr.C.Vigneswaran

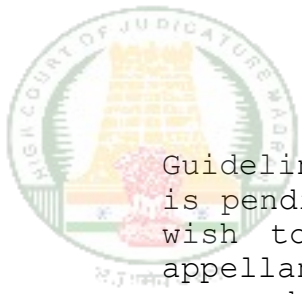
For Respondents 1 & 2 .. K.Srinivasa Murthy

COMMON JUDGMENT

These Writ Appeals have been directed against the common order passed by the learned single Judge dated 26.02.2021 in W.P.Nos.797 and 3592 of 2021.

2. The brief facts, necessary for disposal of the present Writ Appeals, are stated as follows:

2.1The Appellant is an Educational Trust running several schools. An extent of 17 Grounds and 1743 sq.ft. along with a passage measuring 2 Grounds and 1174 sq.ft. comprised in T.S.No.32/1 Part, Block No.11, Sembiam village, Perambur-Purasawalkam Taluk, Chennai District, was leased out by the 2nd respondent to the Appellant for the purpose of running a school therein. The above mentioned property falls under the category of 'enemy property' and the same is vested with the 2nd respondent as per the Enemy Property Act 1968. The period of lease has got extended for the next three years and the last of such extension expired on 08.09.2020. Subsequently, the appellant gave a representation to the 2nd respondent by offering to purchase the property as per the Rule 9(2) of the



Guidelines for Disposal of Enemy Property Order, 2018 and that is pending. The respondents did not opt to extend the lease and wish to take back the possession of the property. But the appellant did not hand over possession. Consequently, respondents sealed the premises by issuing a sealing order and thus took back the possession.

2.2 The appellant had filed the first writ petition in W.P.No.797 of 2021, praying for an issuance of a direction to the 2nd respondent to renew the lease and to consider the purchase proposal given by the Appellant and forbear the respondents from evicting the appellant. Since the property was sealed during the pendency of the above writ petition, the appellant filed another writ petition in W.P.No.3592 of 2021, praying to quash the sealing notice and order dated 08.01.2021 and for a direction to de-seal the premises.

3. The learned single Judge, under a common order, dismissed the writ petition in W.P.No.797 of 2021 and disposed off the other writ petition in W.P.No.3592 of 2021 by directing the respondents to consider the representation of the appellant dated 09.11.2020 to purchase the property after affording a fair hearing to the appellant, within a period of one year.

4. Since no direction has been issued with regard to the renewal of lease and to de-seal the premises, the appellant has challenged the common order passed by the learned single Judge by preferring these two Writ Appeals.

5. Heard the submissions made by both side learned counsels and the entire materials available on record perused.

6. The learned counsel for the appellant submitted that in the school run in the demised property, nearly 3900 students were studying and it had CBSE affiliation. Since the respondents have sealed the premises, the Class-rooms, Labs, Rest-rooms, Waiting-room and other important space of the school could not be accessed by the students and their education is very much affected. Further, the school is also under the risk of losing its CBSE affiliation. It is further stated that since the appellant continues to be in occupation of the premises even after the expiry of the lease period, the respondents ought to have given a prior notice and heard the appellant before issuing sealing order and effecting the same. It is further submitted that even if the appellant is considered as an unauthorized occupant in pursuance of the expiry of the lease, as per Rule 2 (a)(h) of the Enemy Property (Amendment) Rules, 2018 read with Rule 14 of the Enemy Property Rules, 2015, (as amended by Amendment Rules 2018), the procedure contemplated under the Public Premises (Eviction of Unauthorised Occupants) Act 1971



should be followed and hence the appellant is entitled for a notice.

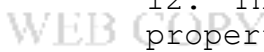
7. It is further submitted that as per the Guidelines for Disposal of Enemy Property Order, 2018, the property can be purchased by the occupant himself and hence, there is every possibility for the petitioner to get an order of sale in his favour and therefore the property should be de-sealed and allowed to be used.

8. However, the learned counsel for the respondents submitted that once the lease period has expired, the appellant who was the lessee, has got a legal obligation to hand over possession and he cannot claim that the respondents should follow the procedure for eviction prescribed under the Public Premises (Eviction of Unauthorised Occupants Act) Act 1971 (Act 40 of 1971).

9. The subject property being the enemy property got vested with the second respondent and he is the custodian of the same. It is up to the second respondent, in particular and other respondents in general to take a policy decision with regard to the manner in which any enemy property is to be managed. Since a policy decision has been taken that the possession of the property should be taken back, the lease was not renewed.

10. The respondents do not have any legal obligation to renew the lease and hence no direction to that effect can be issued. Further due to Pandemic, all schools are closed and classes are being conducted through Online only. So the contention of the appellant that the sealing of the premises had affected the students cannot be taken as correct. Even if it is so, there is no duty bestowed on the respondents to consider it for renewing the lease. Instead, the Appellant who knew about the impending expiry of lease, ought to have been ready to shift the school somewhere or close the school by limiting the admission.

11. The appellant has claimed that his continued possession beyond the expiry of lease period should be considered as that of the occupation of an 'unauthorized occupant' and hence the provisions of Public Premises (Eviction and Unauthorized Occupants) Act, 1958 is applicable to him. By so stating he claimed that he is entitled to remain in possession of the property until he is evicted in accordance with the procedure prescribed under the Public Premises Eviction Act. Such an unlawful bargain made by the appellant cannot be appreciated for the reason that no wrong doer can be allowed to get advantage of his own wrongs. It is trite law that a wrongdoer cannot take advantage of his own wrong. The latin maxim 'nullus commodum capers potest de injuria sua propria' would mean that no



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proper

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."

14. As it is stated already, the respondents have no statutory obligation to extend the lease whenever the lease period expires and it is upto the policy makers to decide about the better usage of the property. When an authority is not bestowed with the duty to do a certain act, it is right for the learned Single Judge to deny the relief of Writ of Mandamus as prayed by the appellant.



15. Since there was a reluctance on the part of the appellant to handover the possession after expiry of the lease period, the 2nd respondent, who is the custodian of the enemy property, has sealed the property by giving a sealing order. If the appellant is aggrieved that his belongings still lie inside the premises, the respondents may permit him to take them away in their presence.

16. So far as the sale of the property is concerned, as per Clause (2) Rule 9 of the Guidelines of the Disposal of Enemy Property Order, 2018, the Custodian can 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. A representation dated 09.11.2020 has been made by the appellant indicating his offer to purchase the property and the same would be considered by the Disposal Committee under Section 8(A) of the E.P.Act and the learned Single Judge has also issued a direction in this regard. However, it is at the discretion of the respondents to accept the offer of the appellant or not. If the respondents incline to take a decision to sell the property to the appellant, the process may be expedited. However, it is made clear that the above suggestion is only an observation and not a direction. In view of the above discussions, we do not find any factual or legal infirmity in the order of the learned single Judge.

17. In the result, the Writ Appeals in W.A. 1146/2021 and 1142/2021 are dismissed and the orders of the learned Single Judge passed in W.P. 797/2021 and 3592/2021 are confirmed. The respondents shall allow the appellant to take away his belongings lying in the subject premises. While doing so, the respondents shall take an inventory of the articles lying inside the premises and get the acknowledgement from the appellant after he has taken them away. No costs. Consequently, connected CMP is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

suk

To

1. 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,
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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 Mr.C.Vignewaran, Advocate, S.R.No.35886

W.A.Nos.1142 & 1146 of 2021

SS(CO)
SB(17/08/2021)