

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 28.06.2022

PRONOUNCING ORDERS ON : 30.06.2022

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.No.8830 of 2011

and

MP.No.1 of 2011

1.R.Radhakrishnan (deceased)

2.Pennazhagi

3.R.Rajan

4.R.Ramesh

5.Mrs.Shanthi

6.Mrs.Jayanthi

..Petitioners

(P2 to P6 substituted as LRs of deceased
Sole Petitioner vide order dt.28.06.2022
made in WMP.24947/2019 in WP.8830/2011
by NAVJ)

.Vs.

1. Neyveli Lignite Corporation Ltd.,
Rep. By the Chief General Manager
Township Administration. Neyveli.

2. Estate officer/Ata/Eviction
Authority Township Administration
Neyveli Lignite Corporation Ltd., Neyveli.

3. Estate Officer/Es-II
Township Administration
Neyveli Lignite Corporation Ltd.,
Neyveli.

4 R.Nandakumar

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the 2nd respondent relating to the order in Form-A bearing Lr. No. R4 0217/E7/ES-1/TA/2011 dt 15th March 2011 and quash the same

For Petitioners : Mr.P.S.Venkatasubramanian

For Respondents : Mr.N.A.K.Sarma
Mr.N.Nithianandam
for R1 to R3

Mr.K.Sukumaran
for R4

O R D E R

This Writ Petition has been filed challenging Form- A notice, dated 15.3.2011 issued by the 2nd respondent to the petitioner, calling upon the petitioner to show cause as to why the petitioner should not be evicted from the subject property.

2.The case of the petitioner is that he is running a shop and occupying the quarters in the subject property which was handed over to the son of the petitioner pursuant to the allotment order issued in favour of the 4th respondent on 9.4.1996 by the 1st respondent. The further case of the petitioner is that the 2nd respondent initiated proceedings under The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the Act') for eviction and notice was issued only to the 4th respondent inspite of having knowledge that the petitioner is in possession of the property.

3.The eviction notice became a subject matter of challenge before this Court in W.P.No.25939 of 2010 and this Court allowed the Writ Petition through an Order dated 22.11.2010 mainly on the ground that the notice was not issued to the petitioner who was the occupier of the property. This Court granted liberty to the respondents to issue a fresh notice and proceed further in accordance with law. The grievance of the petitioner is that the 2nd respondent, without any power or jurisdiction, issued the impugned show cause notice dated 15.3.2011. It is further contended by the petitioner that the 2nd respondent has straight

away proceeded to issue a notice for eviction, as contemplated under Section 5(1) of the Act, even without issuing a preliminary notice under Section 4 of the Act and the impugned notice has been questioned on this ground also. It is under these circumstances, the present Writ Petition came to be filed before this Court. During the pendency of this Writ Petition, the petitioner died and his legal heirs were substituted.

4. The respondents 1 to 3 have filed a counter affidavit. They have taken a stand to the effect that the 4th respondent was granted license in the year 1993 to run a shop and he was also allotted quarters. It is stated that the 4th respondent unauthorizedly allowed the petitioner to occupy the shop and the quarters. It is under these circumstances, proceedings were initiated to evict the petitioner from the property and appropriate notice was issued under the Act. The respondents have therefore contended that there are no merits in this Writ Petition and the same is liable to be dismissed by this Court.

5. The learned counsel for the petitioner submitted that the 2nd respondent is not an estate officer as defined under Section 2(b) of the Act and hence, the 2nd respondent lacks jurisdiction to issue the impugned notice. It was further contended that the notice issued by the 2nd respondent is under Form-B (even though it is mentioned as Form-A in the notice) and the 2nd respondent has straight away proceeded under Section 5(1) of the Act without complying with Section 4 of the Act, which mandates the issuance of Form-A. Since the show cause notice suffers from patent illegality, it was submitted that the same is liable to be interfered by this Court.

6. Per Contra, the learned counsel appearing on behalf of respondents 1 to 3 submitted that the 2nd respondent is an estate officer and to substantiate the same, the Gazette Notification dated 15.2.1977, issued by the Central Government was brought to the notice of this Court. The learned counsel further submitted that the show cause notice, in substance, satisfies the requirements of Form-A and a Writ Petition is not maintainable against the show cause notice. The learned counsel therefore sought for the dismissal of the Writ Petition.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. It is not in dispute that the license for running the shop and allotment of the residential quarters was made in favour of the 4th respondent. The petitioner seems to have occupied the property subsequently after getting possession from the 4th respondent. Eviction proceedings were initiated even on an earlier occasion during the year 2010. This Court interfered with the eviction proceedings in W.P.No.25939 of 2010 only on the ground that such a notice ought to have been issued even on the occupier of the property. Pursuant to the same, the show cause notice came to be issued on the petitioner by the 2nd respondent.

9. Insofar as the first contention raised by the learned counsel for the petitioner to the effect that the 2nd respondent is not an estate officer appointed by the Central Government, the same is not sustainable. On carefully going through the Gazette Notification issued by the Central Government, it is seen that the 2nd respondent has been specifically designated as an estate officer for the purposes of the Act. Hence, this contention raised by the petitioner has to fail.

10. The second contention raised by the learned counsel for the petitioner touches upon the form of the show cause notice issued by the 2nd respondent. Section 4(1) of the Act stipulates that where the estate officer is of the opinion that any person is in unauthorised occupation of any public premises and should be evicted from the same, the estate officer should issue a notice as provided under the Rules. The form of notice under Section 4(1) of the Act is specified under Form-A which speaks about the opinion arrived at by the estate officer and the grounds on which such an opinion was arrived at. On receipt of this show cause notice, where the occupier gives a reply and the same does not satisfy the estate officer, Section 5(1) of the Act contemplates the estate officer to make an order of eviction for the reasons to be recorded therein. The form in which such an order is issued is dealt with under the Rules, under Form-B. It was contended on the side of the petitioner that the 2nd respondent has straight away issued Form-B even without issuing Form-A and the same is liable to be interfered by this Court.

11. In the considered view of this Court, this Court has to understand the show cause notice as a whole by carefully going through its contents. It is true that the words "opinion" and "grounds" are missing in the impugned show cause notice. Instead what is found are the words "satisfied for the reasons recorded" and "reasons" as provided under Form-B which is issued under

Section 5(1) of the Act.

12. On carefully going through the contents of the show cause notice, it can be seen that the 2nd respondent has merely extracted the grounds on which he gathered an opinion to the effect that the petitioner is in unauthorised occupation of the public premises. The show cause notice also takes note of the earlier notice that was issued to the 4th respondent and the subsequent order passed by this Court in the Writ Petition. In the penultimate paragraph, it is specifically stated that pursuant to Section 4(1) of the Act, the petitioner is called upon to show cause as to why an order of eviction should not be made and the petitioner has been directed to appear before the 2nd respondent for personal hearing and to submit his explanation, if any.

13. This Court is satisfied that the impugned show cause notice issued by the 2nd respondent, in essence, is a notice issued in accordance with Section 4(1) of the Act and it will be too hyper technical to hold it otherwise just because the impugned notice does not use the words "opinion" and "grounds".

14. The notice issued under Form-B is more in the nature of an eviction order passed under Section 5(1) of the Act. The Form-B notice is not in the nature of a show cause notice and it straight away directs an unauthorised occupier to vacate the premises within a stipulated time. That is not the purport of the impugned show cause notice issued by the 2nd respondent. Therefore, the contention of the petitioner as if the impugned show cause notice is not in Form-A, is totally misconceived and the said contention is liable to be rejected by this Court. The second contention raised by the learned counsel for the petitioner also fails.

15. This Court does not find any merits in this Writ Petition and the same is liable to be dismissed by this Court.

16. In the result, this Writ Petition is dismissed and there shall be a direction to the petitioners to submit their reply to the show cause notice dated 15.3.2011, on or before 25.7.2022 to the 2nd respondent. On receipt of the same, the 2nd respondent shall proceed strictly in accordance with law. If the petitioners do not give any reply within the time stipulated by this Court, it will be deemed that the petitioners have waived

their right to give any reply for the show cause notice and it will be left open to the 2nd respondent to proceed further with the process of eviction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Chief General Manager,
Neyveli Lignite Corporation Ltd.,
Township Administration. Neyveli.
2. The Estate officer/Ata/Eviction
Authority Township Administration
Neyveli Lignite Corporation Ltd., Neyveli.
3. The Estate Officer/Es-II
Township Administration
Neyveli Lignite Corporation Ltd.,
Neyveli.

+1cc to Mr.B.N.Nithianandam, Advocate, S.R.No.41664

+2ccs to M/s.P.S.Venkatasubramanian, Advocate, S.R.No.41056

W.P.No.8830 of 2011

AJB(CO)
UMA(18/07/2022)