

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MRS.JUSTICE N.MALA

W.A.Nos.1446 to 1449 of 2022

Rameshkumar	... Appellant in W.A.No.1446 of 2022
Palanisamy	... Appellant in W.A.No.1447 of 2022
Mariyammal	... Appellant in W.A.No.1448 of 2022
Thulasiraman	... Appellant in W.A.No.1449 of 2022

vs

The Estate Officer (ADRMISA), Southern Railway, Divisional Officer, Work Branch, Salem District	... Respondent
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Prayer: To allow this Writ Appeal filed against to set aside the order dated 06.06.2022 in WP Nos.4050, 4057, 4060, 4053, 4055 of 2022 by the Learned Judge of this Hon'ble Court, Madras.

Common Prayer in WP Nos.4050, 4053, 4055, 4057, 4060 of 2022: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, Calling for the records relating to the proceeding of respondent in SA/W.274/Encroachment dated 08.02.2022 and quash the same.

For the Appellants : Mr.M.Elango

COMMON JUDGMENT

(Judgment of the Court was delivered by
the Hon'ble Chief Justice)

The writ appeals have been filed to challenge the order dated 06.06.2002 passed by learned Single Judge dismissing the writ petitions filed to challenge the eviction order passed under Section 5(1) of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 (hereinafter referred to as 'the Act of 1971').

2. It is submitted that in the earlier round of litigation, a Division Bench of this Court, in WP Nos.23078 of 2021 etc. batch, has caused interference in the order issued by the Estate Officer, and quashed the proceedings and directed him to give an opportunity of personal hearing to the appellants. However, the respondent passed an order of eviction under Section 5(1) of the Act of 1971, and that too without assigning any reason. Therefore, the writ appellants have filed writ petitions again, but the same were dismissed.

3. A copy of the order passed under Section 5(1) of the Act of 1971 was produced to indicate that no reason whatsoever has been given, though the provision mandates reasons to be recorded for eviction. In view of the above, learned Single Judge ought to have interfered in the impugned order. The prayer is accordingly, to set aside the order of learned Single Judge as well as the order passed under Section 5(1) of the Act of 1971.

4. We have considered the submission made by learned counsel for the appellants and perused the records. We find that in the earlier round of litigation, the Division Bench vide its order dated 27.10.2021 in W.P.Nos.23078 of 2021 etc. batch, found that during the course of Covid-19 pandemic, proper personal hearing was not given to the appellants. The operative portion of the said judgment in paragraph 9 is quoted hereunder:

"9. In such view of the matter, the order impugned in these writ petitions are set aside and the matter is remanded back to the respondent for fresh consideration. The petitioners are hereby directed to appear for personal hearing on 15.11.2021 and the respondent after hearing the case of the petitioners shall pass orders afresh in accordance with law."

5. Pursuant to the direction aforesaid, the appellants were provided with an opportunity of hearing, and finding no document in their favour to prove the title and the land belonging to the Railways, order for eviction was issued. A perusal of the order reveals disclosure of the facts necessary for issuance of the order of eviction. The two reasons assigned for eviction was that it is Railway land, encroached upon by the appellants, and therefore, eviction has to be effected, and it is also when the writ appellants failed to produce document to prove their rightful possession. The appellants rather sought for providing an alternate accommodation without showing their right for the aforesaid.

6. In view of the above, we do not find any reason to cause interference in the order of learned Single Judge. The

appellants have also failed to clarify as to why the writ petitions were filed to challenge the order under Section 5(1) of the Act of 1971, when the remedy of appeal was available to the writ appellants. In any case, now that the writ petitions having been decided on merits, the issue aforesaid becomes irrelevant. The writ appeals fail and the same are dismissed. There will be no order as to costs. Consequently, C.M.P.Nos.9331, 9332, 9334 and 9346 of 2022 are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

The Estate Officer(ADRMISA),
Southern Railway,
Divisional Officer,
Work Branch,
Salem District.

+1cc to Mr.M.Elango, Advocate, S.R.No.42525

+1cc to Mr.V.Chandra Sekaran SC, Advocate, S.R.No.43307

W.A.Nos.1446 to 1449 of 2022

SKM(CO)
SB(14/07/2022)