

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2022

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.NO.16211 OF 2022

AND

W.M.P.NO.15577 OF 2022

Cercle De Pondicherry
Rep. By its President,
Social and Cultural Club,
No.1, Victor Simonel Street,
Pondicherry - 605 001

...Petitioner

Vs

- 1.The Union of India,
Represented by its Chief Secretary,
Union Territory of Puducherry,
Puducherry.
- 2.The Executive Engineer,
Buildings and Roads,
(Central Division cum Estate Officer)
Public Works Department,
Puducherry.
- 3.Deputy Collector,
Revenue,
Puducherry.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the 2nd respondent herein bearing No.3947/PW/BRC/EE/2022-2023 dated 06.06.2022 and the order bearing No.3947/PW/BRC/EE/2022-23/466 dated 16.06.2022 of the 2nd respondent and quash the same and consequently forbear the respondents from in any manner interfering with the petitioner's peaceful possession and enjoyment of the land and building in survey No.293 part, ward C, Block 21, TS.No.56 of No.40, Puducherry Village of an extent of 45838 sq.ft. Of land and building thereon.

For Petitioner : Mr.AR.L.Sundaresan
Senior Counsel
for Mrs.AL.Ganthimathi

For Respondents : Mr.C.T.Ramesh,
Additional Government Pleader (Pondi)

O R D E R

By consent of both the parties, this writ petition is taken up for final disposal at the admission stage itself.

2. This Writ Petition has been filed challenging the order passed under Sections 5 & 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, under which, the eviction orders have been passed against the petitioner and they have been directed to vacate the premises within a period of 15 days from the date of publication of the order.

3. The petitioner has challenged the impugned orders on the following grounds.

(a) The subject property under the occupation of the petitioner does not belong to the Government of Pondicherry and therefore, the petitioner is not an unauthorised occupant.

(b) The land was allotted to the petitioner in the year 1899 by the then French Government and a nominal rent of Rs.1/- per month was fixed since the land and the building thereon were set apart for the purpose of social and cultural cause for which, the petitioner club was started and for which, the petitioner club is now functioning.

(c) The rent which has been collected at Rs.1/- per month initially was revised to Rs.1,592/- per month. According to the petitioner, they are not estopped from raising objections against the enhancement of rent which is subsequently done when the land itself does not vest with the Government of India or with the Government of Puducherry.

(d) Even though, earlier the respondents had issued notice calling upon the petitioner to pay the revised rent as demanded by them, they were not acted upon. According to the petitioner, the Club is in existence from 1899 with records available for several decades if not from 1963 onwards even as per the impugned notice. Even as per the impugned notice, possession and enjoyment of the petitioner dates back to 1938 onwards from the then French Regime and as such, without reference to the transition of power from the Government of India to the Government of Puducherry, subject to the explanation as mentioned hereinabove, the 2nd respondent issued notices and passed orders under Section 7 and Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, which according to the petitioner, is wholly without jurisdiction. Accordingly to the petitioner, the rent has been enhanced from Rs.1,952/- per month to Rs.10,71,745/- per month and therefore, such an enhancement is without any basis or justification. The

petitioner is a non profit organization and carries on social, cultural and sports activities for its members.

4. Mr.AR.L.Sundareshan, learned senior counsel for the petitioner drew the attention of this Court to the letter dated 13.06.2022 submitted by the petitioner to the respondents, on receipt of the show cause notice dated 08.06.2022. In the said letter, it has been informed that the office bearers of the petitioner had appeared before the respondent on the very same day i.e., 13.06.2022 at 11. a.m. and the office bearers sought sufficient opportunity to file objections to the show cause notice. But as seen from the letter, it is the case of the petitioner that they were informed by the respondents that 13.06.2022 is the last date for passing of the final order. Mr.AR.L.Sundareshan, learned senior counsel for the petitioner would submit that the petitioners have not been granted sufficient opportunity to submit their objections with regard to the charges levelled in the show cause notice issued by the respondents.

5. However, the learned Additional Government Pleader appearing for the respondents would submit that sufficient opportunity has been granted to the petitioner. According to him, on 16.05.2022 itself, the show cause notice was issued which was not responded by the petitioner. He would further submit that the petitioner is occupying a prime area and has also not paid the rent to the respondent from 2010 onwards and the earlier rent paid by the petitioner is also very low. He would also submit that the petitioner, without exercising the alternate statutory appellate remedy available under section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, has filed this writ petition which is not maintainable.

6. This Court has perused and examined the impugned eviction orders. As seen from the impugned orders, on a prima facie consideration, it cannot be considered to be a non-speaking order. Admittedly, earlier show cause notice dated 16.05.2022 issued by the respondent to the petitioner was not responded by the petitioner within the prescribed time as stipulated in the said show cause notice, but was responded only on 03.06.2022. Only on 13.06.2022, the petitioner during personal hearing had requested the respondents to grant some more time for submitting their objections with regard to the charges levelled in the show cause notice issued by the respondents. Their contention is that the respondents cannot claim rent from them on account of the fact that they were put in possession from 1899 when the French Government was in control of Pondicherry. Since in the impugned orders, the respondents have given some reasons for passing the eviction order, this Court is of the considered view that the petitioner

ought to have filed the statutory appeal under section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, if aggrieved by the impugned orders. But instead, the petitioners have chosen to file this writ petition which is not maintainable. However, the petitioner's interest will also have to be protected after giving due consideration to the fact that they are in possession of the property ever since 1899 and they are running a Club which provides social, cultural and sports facilities and is also a Club which claims that it serves the public on non-profit basis.

7. For the forgoing reasons, this Court directs the petitioner to file the statutory appeal under section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, as against the impugned orders dated 06.06.2022 and 16.06.2022 within a period of ten days from the date of receipt of a copy of this order. Since the petitioner is in possession of the property ever since 1899 and claims to run the Club on no profit motive basis, there shall be an order of stay of eviction till the statutory appeal is finally disposed of by the Appellate Authority under section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The Appellate Authority is directed to pass final orders once the statutory appeal is filed by the petitioner within a period of two months thereafter. This Court is not expressing any opinion on the merits of the matter and it is left open to the Appellate Authority to consider the contentions raised by both the parties and decide the matter on merits and in accordance with law.

8. With the aforesaid directions, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

9. Registry is directed to return the original impugned orders to the petitioner to enable the petitioner to file the statutory appeal.

Sd/-
Deputy Registrar(CS)

// True Copy //

Sub Assistant Registrar

vsi

To

1.The Union of India,
Represented by its Chief Secretary,
Union Territory of Puducherry,
Puducherry.

2.The Executive Engineer,
Buildings and Roads,
(Central Division cum Estate Officer)
Public Works Department,
Puducherry.

3.Deputy Collector,
Revenue, Puducherry.

Copy To

The Section Officer,
E.R.Section,
High Court, Madras.

+1cc to M/s.AL.Ganthimathi, Advocate Sr.No.40543

+1cc to the Government Pleader (Puducherry) Sr.No.41041

W.P.No.16211 of 2022

PM(CO)
RVM(11/07/2022)