



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.12.2022

CORAM

THE HON'BLE MR. JUSTICE **C.V.KARTHIKEYAN**
AND
THE HON'BLE MR. JUSTICE **S.SOUNTHAR**

W.P.No.35090 of 2022
and
W.M.P.No.34542 & 34543 of 2022

1.S.Geetha

2.Maheswari

3.R.Prabhakaran

.. Petitioners

Vs.

1.The District Collector,
O/o.District Collector office,
Chengalpet District.

2.The General Manager,
Southern Railway,
Park Town, Chennai.

3.The Additional Divisional Railway Manager – cum – Estate Officer,
Chennai Division,
Southern Railway,
Chennai - 600 003.



4.The Project Engineer,
Rail Land Development Authority,
O/o.Rail Land Development Authority,
Chennai – 600 003.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned 'B' notice dated 15.12.2022 issued by the 3rd respondent which was served to us on 16.12.2022 and to quash the same as illegal and without jurisdiction and consequently, direct the 3rd and 4th respondents not to disturb the peaceful possession of the house premises of the petitioners at D.No.42, 44, 22 Bharathamadha Street, Tambaram Sanatorium, Chennai – 600 059.

For Petitioner

.. Mr.N.G.R.Prasad,

For M/s.Row and Reddy.

For R1

.. Ms.E.Ranganayagi,

Additional Government Pleader.

For R2 to R4

.. Mr.AR L.Sundaresan,

Additional Solicitor General,

Assisted by Mr.Samivel,

Senior Panel Counsel.



WEB COPY



ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus seeking interference with the impugned B Notice dated 15.12.2022 issued by the 3rd respondent / Additional Divisional Railway Manager -cum- Estate Officer, Chennai Division, Southern Railway, which was served on the petitioners on 16.12.2022 and to protect the possession of the petitioners in Door No.42, 44 and 22, Barathamadha Street, Tambaram Sanatorium, Chennai – 600 059.

2.The petitioners in their affidavit have stated that they have been living in the aforesaid address for the past 50 years. They constructed small houses measuring about 200 to 450 sq.ft. There are more than 50 families living in the land in S.Nos.242/1 & 242/2, which totally measures to an extent of about 1 acre and 50 cents. It had been further stated that the land had been classified as Thatcha Maniyam Poramboke land. They had put up thatched house and cement sheet houses in the said land. They had stated that their house are the only premises, which they could reasonably occupy. They have no other residential premise. It had been stated that much earlier,



their ancestors filed a suit in the name of Dr.Ambedkar Riccksha Ootuners Kudiyiurppor Podhu Nala Sangam in O.S.No.795 of 1995, which had been filed with respect to the very same lands seeking the reliefs of permanent injunction restraining the defendants therein, who in effect are the respondents herein, from interfering with the peaceful possession of the premises. The suit was filed before the District Munsif Court at Tambaram. By judgment dated 15.10.1998, the suit was decreed. During the course of judgment, the learned District Munsif, Tambaram, had also stated that the defendants had not established title over the said premises and as a matter of fact, had also drawn reference to the evidence of DW-1.

3.This judgment, was the subject matter of First Appeal before the Sub Court at Tambaram in A.S.No.1 of 2008 preferred by the respondents herein. The learned First Appellate Court Judge also examined the evidence presented and had also, in the judgment, commented upon the evidence of DW-1 and the lack of title to the lands of the appellants therein / respondents herein. Finally, the learned Sub Judge had affirmed the decree of the Trial Court and had dismissed the First Appeal.



4.To the knowledge of this Court, no further appeal had been preferred by the respondents herein questioning the First Appellate Court judgment dated 23.04.2009.

5.In the meanwhile, on 23.11.2022, 'A' notice under Section 4(2)(i) and (b)(ii) of the Public Premises (Eviction of unauthorized occupants) Act, 1971 was issued by the 3rd respondent herein in his capacity as Estate Officer to the petitioners herein calling upon the petitioners as to the nature of their possession and to show cause evidence as to the right under which they occupy the premises. Opportunity was granted to reply to the show cause notice and to appear on 15.12.2022 at 3.00 p.m for personal hearing.

6.It is the specific contention raised by the learned counsel for the petitioners that the assistance of an advocate was specifically denied and that the petitioners herein had submitted the copies of the judgment of the Trial Court and of the First Appellate Court before the said authority on 15.12.2022. It was stated that without even examining those documents and the records relating to continuous possession, the impugned order had been passed on 15.12.2022. The impugned order which had been issued under



Section 5(1) of the Public Premises (Eviction of Unauthorized Occupants)

Act, 1971, is as follows:

“ **REASONS**

YOU WERE ISSUED WITH FORM 'A' NOTICE DATED 23.11.2022 TOWARDS UNAUTHORIZED OCCUPATION OF RAILWAY LAND DULY GIVING FULL OPPORTUNITIES TO SHOW CAUSE ON 15.12.2022 at 15.00 hrs.

Now, therefore in exercise of the powers conferred on me under Sub Section (1) of Section (5) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby ordered the said Smt.Geetha and all other persons who may be in occupation of the said premises or any part hereof to vacate the premises within 15 days from the date of publication of this order. In the event of failure to comply with this order within the period specified above, the said Smt. Geetha and all other persons concerned are liable to be evicted from the premises by use of such force which may be necessary.

SCHEDULE

A piece and parcel of Railway land to the extent area of 18.52 Sqm at Survey No.242/1, No.42, Barathamatha Street, Tambaram Sanitorium, Chennai – 600 059.



WEB COPY



7

No.M/W 234/Ench/TBMS-3 Nos.

Dated: 15.12.2022.

sd/-”

7.The reasons do not disclose consideration of the fact that there was an earlier suit filed and that, the said suit was decreed and that the appeal filed by the respondents herein had also suffered an order of dismissal. There is no reference to the suit at all. The order has to be interfered with by us, as being bereft of any reasons.

8.It is seen that opportunity was granted to the petitioners to appear on 15.12.2022 at 3.00 p.m. The impugned order had been passed on the very same day. The statement across the bar by the learned counsel for the petitioners that assistance of an Advocate was denied had also not been answered in the impugned order. It is not known why the assistance of the Advocate was denied to the petitioners, particularly since the petitioners relied on judgments of competent Courts, and only a legally trained mind would be able to discern the reasons given in the said judgments.



9.A statement is made across the bar that records were produced. The impugned order does not reflect this aspect, and there is no reference to the records which had been produced. This only indicates that records though produced had not been considered by the said authority.

10.The order, naturally, stands vitiated. It does not stand the scrutiny of this Court. It is interfered with. It is set aside.

11.The question now remains is that whether the earlier notice issued dated 23.11.2022 under Section 4(2)(i) and (b)(ii) of the Public Premises (Eviction of unauthorized occupants) Act, 1971, can stand and whether opportunity has to be given to the said official to re-examine the records produced by the petitioner and provide an opportunity of hearing to the petitioners.

12.The learned counsel for the petitioners insisted that the exercise would be an exercise in futility, as the respondents herein are well aware about the judgment and decree of the Trial Court and of the First Appellate Court negating the title of the respondents herein. It is therefore stated



that, going before the said authority would only be driving the petitioners from pillar to post, over an issue which had already been decided by the Trial Court and by the First Appellate Court. It is also stated that the issue of title cannot be re-agitated, since that issue had been answered to the disadvantage of the respondents herein.

13.The learned Additional Solicitor General, who appeared on behalf of the 2nd the 4th respondents, however stated that the 3rd respondent is the competent authority to issue such a notice and stated that the possession of the petitioners will have to be examined on the basis of the available records and therefore, stated that the right of the 3rd respondent to issue a notice under Section 4 of the Act, cannot be taken away by this Court, merely because of the judgments of the Trial Court and of the First Appellate Court, which after all dealt only with the issue of possession.

14.Having considered the further arguments submitted, we are of the opinion that the respondents would be well advised to designate another officer to issue a Form 'A' notice under Section 4(2)(i) and (b)(ii) of the Public Premises (Eviction of unauthorized occupants) Act, 1971, afresh.



WEB COPY

15. The learned Additional Solicitor General, however stated that the 3rd respondent has been specifically authorized to issue such notice. However, let the respondents herein ponder over that particular aspect, since the issue of bias would necessarily creep in and therefore it would be prudent that Form 'A' notice is issued afresh after examining the records, particularly the judgments referred. Thereafter, let the petitioners give their replies along with documents.

16. The complaint about denial of opportunity to be represented by an advocate has also to be examined by this Court. Since the issue relates to possession which is intermingled with the title or rather lack of title of the respondents, it would be only appropriate that the petitioners have the assistance of somebody who is legally trained to address those issues.

17. In the result, the following directions are issued:

- (i) Let a fresh Form 'A' notice be issued.
- (ii) The petitioners may reply to the same by producing relevant records and also seek assistance of an Advocate, if they deem required.
- (iii) Let a proper hearing be conducted and all issues be answered in the course of the order under Section 5 of the Act.



(iv).Let the issue of title or lack of title of the respondents as stated by the Trial Court and by the First Appellate Court in the judgments referred be also addressed in the said order.

18.We would leave it to the wisdom of the respondents to take a decision to vest the powers of the Estate Officer on an another officer. They must ensure that principles of natural justice are followed not just as an empty formality, but in letter and spirit and in an effective manner to address the issues raised by the petitioners herein.

19.With the above observations, this Writ Petition stands allowed. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

[CVKJ] [SSJ]
28.12.2022

Index:Yes/No
Internet:Yes/No
smv



WEB COPY

To,

- 1.The District Collector,
O/o.District Collector office,
Chengalpet District.
- 2.The General Manager,
Southern Railway,
Park Town, Chennai.
- 3.The Additional Divisional Railway Manager – cum – Estate Officer,
Chennai Division,
Southern Railway,
Chennai - 600 003.
- 4.The Project Engineer,
Rail Land Development Authority,
O/o.Rail Land Development Authority, Chennai – 600 003.



WEB COPY



13

**C.V.KARTHIKEYAN,J.
AND
S.SOUNTHAR,J.**

smv

W.P.No.35090 of 2022
and
W.M.P.No.34542 & 34543 of 2022

28.12.2022