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W.P.Nos.1698, 1699, 1703, 1705, 1708, 1709 & 1710 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.Nos.1698, 1699, 1703, 1705, 1708, 1709 & 1710 of 2023

and

W.M.P.Nos.1808 to 1813, 1815, 1816, 1818, 1820, 1825, 1826, 1828 & 1829 of 2023

Lima Roselind Ligorì

... Petitioner
in W.P.No.1698/2023

John Britto

... Petitioner
in W.P.No.1699/2023

X.Albert Pushpanathan

... Petitioner
in W.P.No.1703/2023

Shathi Kalaiselvan

... Petitioner
in W.P.No.1705/2023

Dharmaraj

... Petitioner
in W.P.No.1708/2023

Barnabass Rita

... Petitioner
in W.P.No.1709/2023

Prabha

... Petitioner
in W.P.No.1710/2023

Vs.

The Commissioner cum Estate Officer,
Udhagamandalam Municipality, Udhagamandalam,
The Nilgiris, Tamil Nadu – 643 001.

... Respondent
in all the W.Ps



Common Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for records of the respondent in Na.Ka.No.10743/2022/A9 dated 11.01.2023 and the quash the same.

For Petitioners : Mr.N.A.Nassir Hussain

For Respondent : Mr.P.Srinivas

COMMON ORDER

The Writ Petitions have been filed challenging the order passed under Section 5 of Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 for eviction of the petitioners from the premises.

2. Since all the writ petitions relate to common issue, the writ petitions shall be disposed in a common order.

3. It is the case of the petitioner that in W.P.No.1698 of 2023 that the property was originally allotted to the petitioner's father in law. In W.P.Nos.1699, 1703 and 1710 of 2023, the property has been originally allotted to the petitioners' great grand father. In W.P.No.1705 of 2023, the property has been originally allotted to the great grand father of the petitioner's husband. In W.P.No.1708 & 1709 of 2022, the property has been originally allotted to the petitioners' father. The petitioners are lawful tenants under the respondent and they are continuing as tenants



as legal heirs of the original allottees. However, the respondent issued a eviction notice vide order dated 17.04.2017 calling upon the petitioners' to vacate and handover vacant possession within 15 days. Hence, the petitioners' have filed Writ Petitions in W.P.Nos.11297 of 2017 etc., before this Court and this Court by an Order dated 02.05.2017 has held that Section 4 of Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 notice to be treated as show cause notice and directed the petitioners to give an explanation and pursuant to the same, the petitioners' submitted their explanation. Thereafter, no action has been taken. Now, all of a sudden, the respondent has issued a letter in ROC.No.0743/2020/A1 dated 02.01.2022 directing the petitioners' to appear for personal enquiry. When the petitioners' presented their explanation along with necessary documents, the impugned order came to be passed, which is challenged in these writ petitions.

4. Learned counsel appearing for the petitioner would mainly submit that though a notice under Section 4 of Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 has been issued, the same does not contain any reason for the proposed action which is a mandatory requirement. In other words, it is the contention that sub clause 2 of Section 4 of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975, the notice must contain the grounds on which the order of eviction is proposed to be made. Besides, the description of the



property has also to be given whereas the notice issued under Section 4 of Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 does not contain any particulars. Similarly, the order has been passed under Section 5 of Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 on the basis of the order passed by this Court in public interest litigation. Therefore, seeks to set aside the order.

5. Mr.P.Srinivas, learned counsel, takes notice for the respondent and submitted that the orders have been passed pursuant to the direction issued by this Court in W.P.No.11297 of 2017 and further, submitted that writ petitions are not maintainable and only the appeal is maintainable under Section 9 of Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 before the District Court.

6. I have perused the materials available on record.

7. As rightly pointed out by the learned counsel for the petitioner, the writ petitioners originally challenged similar notice in the year 2017. This Court has disposed the writ petitions directing the petitioners to give explanation. After such explanation, the authorities have satisfied with explanation and not proceeded further.



Now, they issued a notice under Section 4 of Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 which is followed by the order under Section 5 of Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975. It is relevant to note that a W.P.No.22071 of 2017 filed by some of the employees of the municipality for allotment of shops, this Court called for the reports from the Collector and found that out of 376 municipal quarters, only 106 staffs have been allotted and others were in occupation of the third parties.

8. Taking note of the above, this Court directed the respondents to follow the procedure contemplated in the provisions of the Act and thereafter, evict the unauthorized occupants and take possession of such property and complete such exercise, within a period of three months. Now, it appears that pursuant to the above directions, once again a notice has been issued. It is relevant to note that the notice has been issued in Form-A, in a cyclostyle format to all the petitioners. There was no reason as to why they proposed to evict the petitioners from the shop. It is relevant to extract Section 4 sub clause 2 of Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 which reads as follows:-

Section 4:-Issue of notice to show cause against order of eviction-

(2) The notice shall-

(a) specify the grounds on which the order of eviction is



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proposed to be made; and

(b) require all person concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in the public premises,-

(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not later than seven days from the date of issue thereof, and

(ii) to appear before the estate officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.

The above section makes it mandatory to the authorities to specify the grounds on which the order of eviction is proposed to be made in the notice itself. However, the notice issued does not contain any grounds, on which the order of eviction is proposed to be made and the notice has been made only in cyclostyle format mainly only on basis of the direction issued by this Court.

9. Be that as it may, the learned Single Judge of Delhi High Court in Civil Writ Petition No.364 of 74 dated 28.10.1987 has held as follows:-

“2....The short question which needs decision in the present petition is whether in the absence of particulars of the property given in notice issued under Section 4, the eviction order passed, in pursuance to that notice is vitiated or not? It is, indeed, not disputed that it was mandatory



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*requirement of law that a notice under Section 4 must be served before taking any proceeding under Section 5 of the Act. Mere fact that the petitioner assumed that the notice under Section 4 pertained to the premises in his occupation would not validate the notice if notice per se is bad. In **Amulya Chandra Sutradhar & Another v. Estate Officer, AIR 1964 Tripura 9**, a similar question arose for decision and it was held by the learned Judicial Commissioner that when proceedings are to be taken under Public Premises (Eviction of Unauthorised Occupants) Act, 1958, the public premises in respect of which action is going to be taken must first be ascertained by the Estate Officer and the first notice under Section 4(1) must clearly mention in respect of what public premises the eviction proceedings are being taken. It was further observed that thus the description of property in the first notice must not be indefinite as it is necessary for the reason that if a person is to be evicted from any premises in his possession which is claimed to be public premises, he must be told clearly by the description in the notice as to what those premises are and it is only after knowing what those premises are that the said person can show cause against such eviction.*

3. Counsel for the petitioner has pointed out that the premises in possession of the petitioner also bear municipal No.10547/1, Gail No.3, Bagichi Allaudin, Motia Khan, New Delhi. But in the notice under Section 4 except for giving the measurements of the land nothing has been mentioned



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as to what are the boundaries of the said land and whether the said land is part of any khasra number or whether the said land bears any Municipal number. He has vehemently argued that notice is clearly not valid inasmuch as it does not show specifically as to what premises it pertains to and is inclined to agree with the contention of the learned counsel for the petitioner in this respect because the notice under Section 4 must contain the particulars of the premises so that the person on whom notice is served is made aware clearly as to for what premises he has to show cause. The subsequent correction made in the description of the premises in the ultimate order of eviction passed under Section 5 of the Act does not have the curing the defect appearing in the notice. In Dr. Yash Paul Gupta v. S.S.Anand and others, AIR 1980 Jammu and Kashmir 16, the notice under Section 4 did not contain the reasons as to how the Estate Officer came to the conclusion that the person in occupation of public premises unauthorised occupants and such reasons were sought to be specified in final order. It was held by the High Court of Jammu and Kashmir that the notice under Section 4 did not contain the reasons, thus the notice under Section 4 is invalid and the effect of giving reasons in subsequent order does not cure the invalid notice served under Section 4 of the Act.”

10. In this case also there are no details and description of the property



specifically mentioned in the notice. That part, the grounds on which, the order of eviction is proposed to be made is also silent in the entire notice. Therefore, the very notice itself is not according to law. Pursuant to the above notice, the impugned orders have been passed under Section 5 of Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 mainly relying upon the direction issued by this Court in the earlier writ petitions. Though an opportunity has been given, the authorities have passed the impugned order based on the direction issued by this Court in the earlier Writ Petitions. However, considering the fact that any order passed under Section 5 of Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 the effective alternative remedy is available under Section 9 of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Rules, 1978, these writ petitions cannot be maintained.

11. In such view of the matter, the petitioners are directed to file an appeal as contemplated under Section 9 of Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 and canvass all the grounds before the learned District Judge, as per law. Such appeal shall be filed, within a period of two weeks from the date of receipt of copy of this order. On such appeal is filed, the learned District Judge shall dispose of the appeal, within a period of four months. Till the appeal is filed, the respondent shall not evict the petitioners.



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12. Accordingly, the Writ Petitions are disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

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Index :Yes/No

Neutral Citation: Yes / No

AT

To
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N.SATHISH KUMAR, J.

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