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Writ Petition Nos.24336, 26860 and 24649 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13/2/2023

C O R A M

THE HONOURABLE Mr.JUSTICE N. SATHISH KUMAR

Writ Petition Nos.24336, 26860, 24649 of 2009

E.S.Ramachandran	...	Petitioner in W.P.Nos. 24336 and 26860 of 2009
K.Ashok Metha	...	Petitioner in W.P.No. 24639 of 2009

Vs

1. The Commissioner Corporation of Chennai Rippon Building Chennai 600 003.		
2. The Estate Officer and Commissioner for Chennai Corporation Rippon Building Chennai 600 003.	...	Respondents in both the writ petitions

PRAYER in W.P.No.24336 of 2009 : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records pertaining to the proceedings of L.E4/5249/2000 (Ni.ma.u.thu.na.ka.No.L E/4/5249/2000 dated 21/10/2009 which was



actually served on 20/11/2009 by 5.25 p.m., with respect to the property situated at Vepery Village in S.No.1272/1 part measuring 1200 Sq.feet bearing Door No.180/1 Wall Tax Road, Chennai 3.

PRAYER in W.P.No.26860 of 2009 : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records pertaining to the proceedings of L.E4/4787/2000 (Ni.ma.u.thu.na.ka.No.L E/4/4787/2000 dated 9/11/2009 which was actually served on 12/12/2009 by 5.25 p.m., with respect to the property situated at Vepery Village in S.No.1272/part measuring 1200 Sq.feet bearing Door Nos.210, 211 Wall Tax Road, Chennai 3.

PRAYER in W.P.No.24639 of 2009 : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records pertaining to the proceedings of the second respondent in Ni.ma.u.thu.na.ka.No.LE/4/5249/2000 dated 21/10/2009 which was actually served on 20/11/2009 by 5.25 p.m., with respect to the property situated at Vepery Village in S.No.1272/1 part measuring 1080 Sq.feet bearing Door No.186/2 Wall Tax Road, Chennai 3.



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For petitioners ... Mr.N.Jothi
Sr. Counsel
for Mr.V.Srikanth

For respondents ... Mr.G.T.Subramaniam

COMMON ORDER

These writ petitions have been filed to quash the Proceeding, dated 21/10/2019, issued by the second respondent, in Ni.ma.u.thu.na.ka.No.LE/4/5249/2000 with respect to the properties situated at Vepery Village, Chennai.

2. The case of the writ petitioners is that Head of the Corporation, who claims to be owning the property of the Corporation, issued impugned Proceedings, in terms of Section 4 (1) of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975, claiming to be the “Estate Officer.” Being aggrieved, petitioners have come forward with these writ petitions.

3. Counter affidavit was filed on behalf the respondents, wherein, it is stated that the petitioners are in unauthorised occupation and enjoyment of



the lands, belonging to the respondents. They have neither title nor any lawful leasehold right over the above lands. Hence they are liable to pay the damages. Therefore, impugned notices were served to the petitioners to vacate their possession.

4. Answering to the counter affidavit, common reply affidavit was filed by the writ petitioners, wherein it is stated that they are in continuous possession of the property for decades together. They were considered as “lawful occupant” and not “unauthorized occupant.” Moreover, the Commissioner of the Corporation is not the “Estate Officer” to initiate any proceedings under the Tamil Nadu Public Premises) Eviction of Unauthorized Occupants) Act, 1975 (T.N.Act 1 of 1976).

5. Further it is stated that the issue of lack of Notification empowering the Commissioner of Corporation of Chennai, as the “Estate Officer” goes to the root of the case. In the absence of any such Notification, the entire notice is void *ab initio*.

6. Heard Mr.N.Jothi, learned Senior Counsel for the petitioners and Mr.G.T.Subramaniam, learned Standing Counsel for the respondents.



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7. Learned Senior counsel appearing for the petitioners submitted that property belonging to the local authority in Chennai, the Personal Assistant to the Collector of Madras in the Madras Revenue District, is the competent person to issue Notice, only under Section 4 (1) of the Act.

8. Adding further, learned Senior Counsel submitted that during the initial stage of hearing these writ petitions, counsel appearing for the respondents relied on G.O.Ms.No.183, dated 22/12/2000 and later, relied on G.O.Ms.No.141, dated 22/9/2015.

9. The person, who is holding the post of an Estate Officer had never issued any Notice under Section 4 (1) of the Eviction Act. Basically, issuance of Notice, holding enquiry and passing of orders are all to be done by the same person and not by different Officers.

10. Section 4 (1) of the Tamil Nadu Public Premises) Eviction of Unauthorized Occupants) Act, 1975 (T.N.Act 1 of 1976) specifies that

(i). Estate Officer shall issue notice; he shall satisfy on the grounds to



issue Notice by his application of mind, he shall issue Summons; he shall hold enquiry and pass orders. When this being the position, Estate Officer, cannot take the tip of the thread left by someone to continue the same.

11. In support of his submissions, he has relied on the following judgments:-

(i). A.K.KRAIPAK AND OTHERS Vs. UNION OF INDIA AND OTHERS {1969 (2) SUPREME COURT CASES – 262}

(ii). J.MOHAPATRA AND CO. AND ANOTHER Vs. STATE OF ORISSA AND ANOTHER {(1984) 4 SUPREME COURT CASES – 103}.

12. Learned Standing Counsel appearing for the Corporation submitted that the petitioners have to prove that they have title over the land. The title in respect of superstructure will not confer any right or title over their possession of the land. Moreover, the petitioners have not produced any documents to show that they have title over the land. Instead of proving their title, the petitioners are questioning the jurisdiction of the respondents issuing the impugned notice.



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13. I have perused the materials available on record.

14. The main challenge is only with regard to the Notice issued under Section 4 of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975.

15. As per Section 2 of the said Act, “**Estate Officer**” means an Officer appointed as such by the Government under Section 3.

16. It is relevant to extract the following:-

a. Section 2 (g) of the said Act, reads as under:-

““Unauthorised occupation” - In relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other



mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.”

b. Section 3 of the said Act, reads as under:-

“Appointment of Estate Officers – The Government, may, by Notification -

a. appoint such persons, being gazetted officers of Government or officers of equivalent rank of the corporate authority, as the Government think fit, to be estate officers for the purposes of this Act; and

b. define the local limits within which, or the categories of public premises in respect of which, the estate officers shall exercise the powers conferred and perform the duties imposed on estate officers by or under this Act”.

c. Sub-clause 2 and 4 of Section 4 of the said Act, reads as follows:-



“(2). The notice shall -

(a). specify the grounds on which the order of eviction proposed to be made; and

(b). require all persons concerned, that is to say, all persons who are, or may be, occupation of, or claim interest in, the public premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.

(4). Where the Estate Officer knows or has reason to believe that any person is in occupation of the public premises, then, without prejudice to the provisions of sub-Section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed.”

17. Notice has been issued by the then Estate Officer, on 19/11/2009



to the petitioners seeking explanation as to why they should not be evicted from the premises. Sub-section (2) of Section 4 of the Act deals with issuance of notice to show cause against order of eviction. A bare reading of sub-section 2 of Section 4 of the said Act, makes it clear that Notice should specify the grounds on which the order of eviction is proposed to be made. Further, clause (4) of sub-section 2 of Section 4 deals with the formation of the opinion of the Enquiry Officer and the reason for the authority to believe that the person is in occupation of public premises and in such cases, a copy of the notice to be issued on the said person. It is evident from the usage of the word 'reason to believe', which is nothing but formation of a rational opinion by the authority concerned. On a perusal of the notice issued by the Commissioner, the reason for which the notice has been issued is very much evident. The Commissioner has in fact opined that the petitioner is an unauthorised occupant and not paying any rents to the Corporation. Therefore, the notice clearly contains the reasons and grounds on which the order of eviction is proposed to be made and, therefore, it is not open to the petitioner to contend that the notice issued by the Commissioner, being the Estate Officer as defined u/s 2, is violative of Section 4 of the Act is wholly unsustainable.



18. It is relevant to note that as per G.O.Ms.No.83, Municipal Administration and Water Supply (MA.V) Department, dated 22/12/2000, the Commissioner of Corporations of Chennai, Madurai, Coimbatore, Tiruchirapalli, Salem and Tirunelveli, Commissioners of Municipalities and Executive Officers of Town Panchayats are appointed as Estate Officers in respect of premises belonging to or vested in the respective Corporations, Municipalities and Town Panchayats for the purposes of the said Act.

19. The above said G.O was issued on 22/12/2000, while the impugned notice has been issued only on 9/11/2009 at which point of time, as per the Act, the Commissioner was notified as the Estate Officer. However, subsequently vide G.O.Ms.No.141, Municipal Administration & Water Supply (MC.I) Department, dated 22/9/2015, the Deputy Commissioner (Revenue and Finance) of Municipal Corporation of Chennai was appointed as Estate Officer in respect of public premises belonging to Municipal Corporation of Chennai. The subsequent G.O., came into effect only on 22/9/2015, whereas the earlier G.O., passed on 22/12/2000, had notified the Commissioner as the Estate Officer. Therefore, when the G.O., was in force and the Commissioner was notified as the Estate Officer, as per the provisions Act, this Court is of the view that notice issued by the



Commissioner, exercising jurisdiction as Estate Officer, cannot be faulted with.

20. The other point raised by the learned Senior Counsel is that since the Deputy Commissioner is lower in rank than the Commissioner, there should be bias in proceeding. Merely on apprehension, one cannot presume bias. Any Officer is appointed as Estate Officer has to decide the issue taking note of the facts and circumstances of each case. Therefore, it is premature to allege that merely because the person who is in lower rank was appointed as Estate Officer, there will be bias is ill-conceived. As notice has been validly issued under the provisions of the Act by the Commissioner as Estate Officer, it is the duty of the petitioners to give a reply to the said notice issued by the Estate Officer, to the authority, who has since been notified as the Estate Officer and the contentions advanced *sans* merit and the same deserves to be negated.

21. The learned Senior Counsel placed much reliance on the judgment on A.K.KRAIPAK AND OTHERS Vs. UNION OF INDIA AND OTHERS, reported in 1969 (2) Supreme Court Cases – 262 with regard to the issue of bias. The said case relates to the inclusion of the Acting



Inspector General of Forest, as a member of the Selection Board. The Hon'ble Apex Court has held that the Board was only a recommendatory body and the recommendations were considered by the Home Ministry and the Union Public Service Commission and there was no bias.

22. Similarly in (1984) 4 SUPREME COURT CASES – 103, J.MOHAPATRA AND CO. AND ANOTHER Vs. STATE OF ORISSA AND ANOTHER, some of the members of the Committee, or sub-Committee set up for selecting books for Educational Institutions are themselves authors whose books are to be considered for selection. The Hon'ble Apex Court has held that possibility of bias cannot be excluded in such a situation.

23. The above ratio cannot be applicable to the facts of the instant cases, wherein, notice has been issued, under Section 4 (1) of the Act. Therefore, merely because the Deputy Commissioner was appointed as Estate Officer, later to the issuance of notice, a presumption of bias cannot be drawn, which is not only premature, but also a mere apprehension, which does not hold water.



24. When the petitioners do not have any valid documents to substantiate their case before Chennai Corporation, the Commissioner, Greater Chennai Corporation, being the authority to protect and safeguard all the properties and to recover all the amounts due to Greater Chennai Corporation, it is not open to the petitioners to question the right or authority of the respondents to issue the said notice within the four corners of law.

25. After expiry of lease period, the petitioners have no legal right to continue in the property of the respondents. Once the title to the land goes away or the lease hold right expires, title for the superstructure will automatically become inoperative and would enure in favour of the respondents. The respondents have initiated action as per due process of law to recover the possession of land from the petitioners. Such being the case, this Court does not find any merit in the writ petition.

26. Learned counsel appearing for the petitioners submitted that only vacant land belongs to the Corporation and superstructure has been built by the petitioners. It is open to the petitioners to take such a stand in the explanation to be submitted to the show cause notice and if such a stand is taken by the petitioners, it is for the Estate Officer to take into consideration



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all the above facts and decide the issue in accordance with law. The petitioners shall submit their explanation to the show cause notice within a period of one month from the date of receipt of a copy of this order and the Estate Officer shall decide the issue within a period of three months thereafter.

27. In the result, these writ petitions are dismissed. No costs.

13/2/2023

Index : Yes / No

Internet: Yes

Speaking/non speaking order

Neutral Citation: Yes

mvs.

To

1. The Commissioner
Corporation of Chennai
Rippon Building
Chennai 600 003.
2. The Estate Officer and
Commissioner for Chennai Corporation
Rippon Building
Chennai 600 003.

N. SATHISH KUMAR, J



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