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C.R.P.No.3481 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.02.2023

Date of Order : 27.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.No.3481 of 2016

and

C.M.P.No.17738 of 2016

Hotel Airways Drive-in
represented by its Managing Partner,
K.R.Indrajit,
No.7, Officers Line,
G.S.T.Road, Pallavaram Cantonment,
Chennai.

... Petitioner

Versus

1. The Defence Estate Officer,
Madras Circle,
No.306, Anna Salai,
Teynampet, Chennai – 600018.

2. D.T.S.Gabriel,
S/o. Late P.G.Dowie
No.16, New Colony,
Jaganathapuram,
Chetpet,
Chennai – 600031.

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to allow this Civil Revision Petition and set aside the order dated 20.09.2016 passed in P.P.C.M.A. No. 14 of 2009 on the file of the Principal District Judge of Kancheepuram District at Chengalpattu.



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For Petitioner : Mr. R. Asokan
For Respondents : Mr. M. Karthikeyan (for R1)
Mrs. Lita Srinivasan (for R2)

ORDER

This Civil Revision Petition has been filed against the order dated 20.09.2016 in P.P.C.M.A. No. 14 of 2009 on the file of the Principal District Judge of Kancheepuram District at Chengalpattu, thereby dismissing the appeal.

2. The first respondent, by order dated 11.08.2009, directed demolition of the alleged unauthorised construction in the premises bearing No.7, Officers Line, G.S.T.Road, Pallavaram Cantonment, Chennai – 600043. Aggrieved by the same, the petitioner filed an appeal in P.P.C.M.A. No. 14 of 2009 and the same was dismissed. Aggrieved over the order passed by the appeal, the present Civil Revision Petition is filed.

3. The learned counsel for the petitioner submitted that the vacant land ad-measuring an extent of 22,300 sq.ft comprised in R.S.No.41(1) situated at St.Thomas Mount-cum-Pallavaram Cantonment belongs to the first



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respondent herein and it was leased out to one O. Kandasamy Chetty by lease agreement dated 15.01.1929. The lease period was 90 years and it is renewable at the option of lessee upto 90 years commencing from 01.04.1929. The lessee is also entitled to put up construction in the demised land, subject to transfer of the leasehold right. One Srivasa Iyengar, who purchased the leasehold right from the original lessee constructed a building in the demised land after obtaining necessary approval for construction from the Cantonment Executive Officer, Pallavaram Cantonment. The legal heirs of the said Srinivasa Iyengar sold the leasehold right with the superstructure to one T.R.Sundaram. Thereafter, it was purchased by P.G. Dowie and his wife Margret Dowie in the year 1963. In the meanwhile, the lease was renewed for further period of 30 years and they had put up additional construction in the building after obtaining approval in the year 1965. Thereafter, they have also applied for renewal of the lease for another 30 years and the application is pending. Further, they had leased out the premises to the petitioner herein under the lease deed dated 26.09.1991 for running a restaurant. On the date of agreement, the petitioner is running the restaurant under the name and style of Hotel Airways Drive-in. While that being so, the first respondent passed an order dated 17.12.1992, directing the lessee to remove the unauthorised construction. Aggrieved over the said order, the lessee preferred an appeal in



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P.P.C.M.A No.94 of 1992 before the District District Court, Chengalpattu and the same was dismissed. Aggrieved by the same, the said lessee has been filed a Writ Petition in W.P.No.17644 of 1994 before this Court and the same was dismissed. The lessee also filed a Writ Appeal and the same was allowed and the Division Bench of this Court in W.A.No.1288 of 2002 set aside the order passed by the first respondent on the ground that no show cause notice was issued prior to the impugned order, however the first respondent was given liberty to take fresh action in accordance with law. Therefore, the first respondent again passed order dated 11.08.2009, thereby directing the second respondent herein, who is the none other than the legal heir of the deceased/lessees, to demolish the unauthorised construction and a copy of the same was also marked to the person in occupation of the premises. In the meanwhile, the second respondent has attempted to evict the petitioner in order to let out the premises for higher rent. Therefore, the second respondent did not challenge the order passed by the first respondent. The petitioner herein only filed an appeal before the Principal District Court, Chengalpattu as against the order passed by the first respondent and it was dismissed by the Principal District Court on the ground that the petitioner has no locus to challenge the said order.



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4. He further submitted that the first respondent committed grave mistake that without issuing any show cause notice as contemplated under Section 4(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the Act' for short) passed the impugned order. Already the Division Bench of this Court in W.A. No. 1288 of 2002, while setting aside the order passed by the first respondent, had given liberty to pass fresh order after issuing of show cause notice. The petitioner being a tenant/occupant is entitled to a show cause notice before taking any decision. However, without giving any opportunity to show the reasonable cause the impugned order of demolition has been passed by the first respondent. Further, there are so many proceedings pending between the petitioner and the second respondent in respect of the petition premises. In the said proceedings, the petitioner is depositing the rent before the Court concerned. In fact, the second respondent was receiving the rent and thereafter, he refused to receive the same and as such, the petitioner is forced to file an application before the learned Rent Controller for depositing the rent. He also submitted that no construction was put up by the lessees but the alteration of the building had been done only as per the approved plan and after getting necessary permission from the authorities concerned.



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5. The learned counsel for the first respondent submitted that the petitioner is the third party to the defence land. The petitioner has no locus standi to challenge the order passed by the first respondent and no lease agreement was ever executed between the petitioner and the first respondent. In fact, the legal heir of the lessees has filed a Writ Petition before this Court in W.P.No.5475 of 2011 for a direction to mutate the leasehold right in respect of the suit property in their names and the same was dismissed by order dated 21.02.2014. Originally, the lease was granted for an aggregate period of 90 years with effect from 01.04.1929 and the term of 90 years of lease expired on 31.03.2019 . Therefore, the petitioner being a third party cannot claim any right over the subject property. In fact, the first respondent had initiated the eviction proceedings under the Act and the eviction order was passed under Section 5(1) of the Act on 03.10.2022. In this connection, the petitioner filed W.P.No.28083 of 2022 and it is pending before this Court. Therefore, the petitioner is an unauthorised occupant without any valid right and hence, the first respondent rightly passed the order.

6. He further submitted that the order impugned in the appeal is not passed under Section 5(1) of the Act. It is in respect of unauthorised construction and unauthorised usage of the site in respect of GLRS 388/274



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and GLRS.No.388/246-8A of St.Thomas Mount-cum-Pallavaram Cantonment

and they have already issued statutory notice. Therefore, there is no question of issuance of show cause notice as contemplated under Section 4(1) of the Act. Subsequently, the first respondent has also issued notice dated 10.06.2016 under Section 7(3) of the Act, thereby called upon the petitioner to show cause on or before 21.06.2016 why an order requiring to pay the damages together with interest at Rs.1,57,58,818/- be not demanded in respect of the land ad-measuring an extent of 0.1137 acre in GLRS No.388/274. Insofar as the land ad-measuring an extent of 0.51 acre in GLRS No.388/274 a claim was made with interest to tune of Rs.1,83,43,296/-. The petitioner did not comply with the same and the first respondent passed the order under Section 5(1) of the Act on 03.10.2022 and it was challenged before this Court in W.P.No.28083 of 2022.

7. The learned counsel for the second respondent submitted that the building belongs to the second respondent together with the land in GLRS.No.388/274 ad-measuring an extent of 51 cents. It was leased out for a period of 11 months in favour of M.J.Manoharan and A.P.Alwar on 26.09.1991. Already, the first respondent passed the order on 17.12.1992 and the same was challenged up to the Division Bench of this Court in



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W.A.No.1288 of 2002. The Division Bench of this Court had quashed the order passed by the first respondent and had given liberty to issue fresh show cause notice. However, the petitioner as well as the respondent were not served any show cause notice as directed by the Division Bench of this Court. In fact, the deliberate action of the first respondent in not issuing the show cause notice would amount to contempt of Court. Therefore, the impugned order passed without any issuance of show cause notice is liable to be set aside.

8. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents and perused the materials placed on record.

9. The land ad-measuring an extent of 51 cents was originally leased out to the the said O. Kandasamy Chetty comprised in GLRS No.388/274 and the land ad-measuring an extent of 57 cents was originally leased out to the said S.Srinivasa Iyengar comprised in GLRS No.388/246-8A situated at St.Thomas Mound-cum-Pallavaram Cantonment. Both the properties are classified as B-3 defence lands and placed under the management of the first respondent herein. These lands were held on lease for residential purposes granted in Schedule VI of Cantonment Land Administration Rules, 1925 for a period of 30 years with



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effect from 01.04.1929 and with effect from 01.09.1936 respectively and an aggregate term of 90 years renewable at the option of the lessee for an interval of every 30 years. The second term of lease of 30 years in respect of GLRS.No.388/274 expired on 31.03.1989 and in respect of GLRS. No. 388/246-8A, the second term of lease expired on 31.08.1996. Thereafter, the leasehold rights of the properties have changed many hands and finally the same were held in the names of P.G. Dowie and Margeret Paremale. The third term of lease renewal was not carried out due to unauthorised construction made in the subject land. The said land has been leased out to the petitioner, who is the third party, for commercial usage. The petitioner is running the Hotel, viz., Hotel Airways Drive-in Restaurant. The last lessees, viz., P.G. Dowie and Margeret Paremale had passed away and their legal heir, viz., the second respondent and the petitioner have filed so many cases one after another against the first respondent and exploiting the defence land for commercial purpose. Under the guise of litigation, they are prolonging the issue and they are enjoying the property without paying any rent to anybody. The first respondent already passed the order of eviction and the same was challenged up to the Division Bench of this Court. This Court by order dated 07.10.2002 set aside the order passed by the first respondent and directed the first respondent to proceed afresh in accordance with law. Thereafter, the first



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respondent issued a communication dated 11.08.2009, which is under challenge in the present Civil Revision Petition.

10. On a perusal of the order dated 11.08.2009, it reveals that the following unauthorised construction put up as shown below:-

“Ground Floor

- 1. Entry to stair case has been covered by constructing walls.*
- 2. Between stair case room and hall a wall fitted with door has been constructed.*

First Floor

- 1. Additional/alterations in the doors and windows i.e. walls have been constructed at the doorways/windows and new doors have been provided.*
- 2. Except stair case room the entire verandah (rear and front) has been changed into five rooms with attached bath/lavatory.*

Out Side

- 1. 4 1/2” thick and 1 '4” height walls have been constructed above the ground level.*



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2. *20'6" x 12'9" size construction consisting of 9" thick brick walls in cement mortar and iron pipes with zinc sheet roof has been constructed.*
3. *15'0"X 7'9" size construction consisting of 9" thick brick walls in cement mortar with zinc sheet roof has been constructed.*
4. *13' x 12'3" size RC septic tank has been constructed.*
5. *The sanctioned main gate to the GST road has been closed by constructing the structures."*

11. Therefore, the first respondent had directed the second respondent to demolish all the unauthorised constructions and stop unauthorised usage of the subject property within a week from the date of receipt of that letter, failing which suitable action will be initiated with out any further reference. The order was also sent to the petitioner herein. The second respondent herein did not challenge the said order and the petitioner alone challenged it on the ground that the first respondent failed to issue any show cause notice as observed by the Division Bench of this Court in W.A.No.1288 of 2002.



12. Admittedly, the petitioner is a third party and he has no locus standi to claim right over the subject property. The petitioner is in occupation of the premises and he was also served a copy of the communication dated 11.08.2009. The full term of lease expired on 31.03.2019, viz., 90 years completed with effect from 01.04.1929. After so many communications finally on 03.10.2022, the first respondent passed an order under Section 5(1) of the Act and it is challenged by the petitioner in W.P. No. 28083 of 2022 and it is pending before this Court without any interim order. Therefore, the second respondent as well as the petitioner were put on notice even before passing order under Section 5(1) of the Act dated 03.10.2022.

13. In fact, in the year 1992 itself the first respondent passed the order and subsequently, it was set aside. Therefore, the second respondent as well as the petitioner had already knowledge and even then the petitioner and the second respondent did not pay any rent for the petition premises to the first respondent herein. That apart, the lease period also expired and as such, the petitioner has no locus to challenge any order passed by the first respondent. Therefore, this court finds no infirmity or illegality in the orders passed by the Court below and there is absolutely no circumstances warranting interference by this Court.



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WEB COPY 14. Accordingly, this Civil Revision Petition is dismissed.

Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index : Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To

1. The Defence Estate Officer,
Madras Circle,
No.306, Anna Salai,
Teynampet, Chennai – 600018.
2. The Principal District Judge of Kancheepuram
District at Chengalpattu.
3. The Section Officer,
V.R. Section,
High Court, Madras.



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G.K.ILANTHIRAIYAN,J.

Kv

**Order in
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