



W.P.No.9461 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	02.12.2022
Pronounced On	11.01.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.9461 of 2016
and
W.M.P.No.8467 of 2016

Rajeswari

... Petitioner

Vs

1.The Principal District Judge,
Puducherry.

2.The Estate Officer-cum-Deputy Collector
(Revenue)-North,
Government of Puducherry,
Saram, Puducherry.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the first respondent pertaining to his judgement and decree dated 29.01.2016 in M.A.No.4 of 2014 and quash the same.



W.P.No.9461 of 2016

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For Petitioner : Mr.Krishna Prasad.R
for M/s.Sarvabhauman Associates

For Respondents : Mr.P.S.Kothandaraman
Government Advocate (Pondicherry)

ORDER

The petitioner has challenged the impugned Judgment and Decree passed by the first respondent, the learned Principal District Judge, Puducherry on 29.01.2016 in M.A.No.4 of 2014 confirming the order dated 30.11.2013 of the second respondent the Estate Officer-cum-Deputy Collector (Revenue) under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the Act).

2. The specific case of the petitioner is that the petitioner's grand father named Kathamuthu was a cultivating tenant of Sri Vedapureeswarar Sri Varadarajaperumal Devasthanam/Temple, Puducherry. However, after the demise of the petitioner's grand father Kathamuthu, the petitioner's father namely Rainal Dhanapal became a cultivating tenant.



W.P.No.9461 of 2016

WEB COPY

3. The further case of the petitioner is that the Devasthanam/Temple authorities had also executed a Lease Deed (Kuthagai Seettu) in favour of the petitioner's father acknowledging that, from 20.10.1975, the petitioner's father Rainal Dhanapal was a cultivating tenant of the land measuring an extent of 62 Kuzhis equivalent to 35712 sq.ft., in R.S.No.124/5 and R.S.No.124/6 (Registration Nos.1187 & 1188) bearing Patta Nos.833 and 723 of Saram Village, Puducherry.

4. It is submitted that an Eviction (Form-A) Notice under Section 4(1) and 4(2) (b)(ii) of the Act was issued by the second respondent to the petitioner represented by her Power Agent D.Nagamani Brathiban on 12.11.2013 and therefore, the said recipient of notice/Power Agent namely D.Nagamani Brathiban replied on 24.11.2013 stating that the property was owned by the petitioner's elder mother by name Rajeswari, who was residing in France and that all the documents relating to the aforesaid land were in possession of her elder mother Rajeswari. Under these circumstances, another Eviction (Form-AA) Notice under Section



W.P.No.9461 of 2016

5-A (2) of the Act was issued by the second respondent to the said recipient of notice/Power Agent namely D.Nagamani Brathiban on 30.11.2013.

5. Aggrieved by the same, the petitioner filed M.A.No.4 of 2014 under Section 9(1) of the Act before the Principal District Court at Puducherry.

6. The case of the petitioner is that the impugned order dated 29.01.2016 passed by the learned Principal District Judge, Puducherry in M.A.No.4 of 2014 confirming the decision of the second respondent in his proceedings dated 30.11.2013 was liable to be quashed as no proper notice was issued by the second respondent.

7. It is the case of the petitioner that the petitioner is the daughter of Rainal Dhanapal, in whose favour, the Devasthanam/Temple has acknowledged existence of a Lease/Arrangements.



W.P.No.9461 of 2016

WEB COPY

8. The learned counsel for the petitioner has relied on the following decisions of this Court:

(i) **T.K.Ayub Vs Mohammed Hanif and others**, 2005-1-L.W.293.

(ii) **R.Sowrirajan Vs T.Kala and others**, 2007 (2) CTC 513.

9. The writ petition is opposed by the learned Government Advocate for the respondents stating that there is no merits in the present Writ Petition. It is submitted that there are no records to establish that the petitioner was having any rights over the property. In any event, service of notice on the deponent who was Power Agent of the petitioner was sufficient. It is submitted that it cannot be said that there was a Violation of Principles of Natural Justice.

10. A reading of the records produced/filed before this Court indicates that the Eviction Notice under Section 4(1) and 4(2) (b)(ii) of the Act was issued on 12.11.2013, to D.Nagamani Brathiban, who is the son of Deivasigamani, who is the deponent and the so called Power Agent of the petitioner.



W.P.No.9461 of 2016

WEB COPY

11. In reply to the aforesaid notice, the deponent D.Nagamani Brathiban has merely stated that the land was owned by his elder mother, who is residing in France.

12. It is under these circumstances, on 30.11.2013, the second respondent has issued Eviction (Form-AA) Notice under Section 5-A (2) of the Act, asking the deponent to remove the building/structures erected on the subject land.

13. Though the appeal was filed by the said Rajeswari and represented by the noticee D.Nagamani Brathiban, as the Power Agent the deponent of the said Rajeswari, the learned Principal District Judge, Puducherry has dismissed the appeal vide impugned Judgment and Decree dated 29.01.2016 in M.A.No.4 of 2014.

14. The point that arises for consideration is, whether, the petitioner is entitled for any notice under the provisions of the aforesaid enactment/Act and whether the petitioner can claim a right as a



W.P.No.9461 of 2016

cultivating tenant under the provisions of the Tamil Nadu Cultivating Tenants Protection Act, 1955 and whether the petitioner is entitled for any compensation under the provisions of the Land Acquisition Act, 1894.

15. I have perused the Order dated 29.01.2016 passed by the learned Principal District Judge, Puducherry in M.A.No.4 of 2014 in the appeal filed by the petitioner represented by the detriment herein. The basis on which the impugned order has been challenged is that there is no violation of Principles of Natural Justice and that petitioner's grandfather as also the father were recognised as cultivating talent of the Sri Vedapureeswarar Sri Varadarajaperumal Devasthanam/Temple, Puducherry.

16. If the land patient was on agricultural land, question of the petitioner putting up to commercial complex cannot be countenanced. The land in question belonged to the said Temple and was acquired and compensation deputed in the Court proceedings. The petitioner, through the deponent however have encroached on the land claiming themselves



W.P.No.9461 of 2016

to be cultivating tenants through their predecessors. Considering the fact that the land has been acquired as early as 19.04.2012 and the petitioner has encroached an extent of 5.81 Centiares of the said land, which was given to the Pondicherry Corporation for Development of Women and Handicapped Persons Limited by raising a Wall.

17. The petitioner had claimed that she was in France and would come back and vacate the premises and time was granted to 09.04.2007. Instead of vacating the encroached land, the petitioner filed W.P.No.12778 of 2007, which was dismissed. There are no records to substantiate that the petitioner has any rights for the land after the land had been acquired by the Government and notional possession was handed over to the beneficiary namely the Pondicherry Corporation for Development of Women and Handicapped Persons Limited.

18. The impugned order of the learned Principal District Judge indicates repeated attempts by the petitioner's father to thwart the attempt of the Government to retrieve the encroached land since the end of the last decade of the last millennium.



W.P.No.9461 of 2016

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19. The so-called lease executed by the said Temple in favour of petitioner's father on 28.10.1975 is of no consequence as the land in question had been acquired under the Land Acquisition Act, 1894. Even if the petitioner's father was entitled to a share in the compensation on account of the acquisition of land under the said Act, as a tenant, the rights of the petitioner at best was confined to a share in the compensation deposited pursuant to the land acquisition proceedings under the said Act. In case the compensation has been taken by the Temple, it was incumbent on the part of the petitioner's father or grandfather as the case may be to have initiated proceedings to recover the same as a money suit.

20. The so-called Lease Deed executed in the year 1975 in favour of the petitioner's father by the aforesaid Temple would not entitle the petitioner to continue possession over the land as such possession would be nothing but an encroachment warranting stringent action under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Further, a land which was an agricultural land cannot be



W.P.No.9461 of 2016

converted into an urban land to claim rights as a cultivating tenant. In my view, the petitioner has delayed handing over the land and has protracted the possession by filing W.P.No.12778 of 2007 and the present writ petition.

21. Therefore, there is no merits in the present writ petition and is deserves to be dismissed. It is accordingly dismissed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

11.01.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order

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W.P.No.9461 of 2016

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To

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- 2.The Estate Officer-cum-Deputy Collector
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W.P.No.9461 of 2016

C. SARAVANAN, J.

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Pre-Delivery Order in
W.P.No.9461 of 2016

11.01.2023