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W.P.No.20049 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MRS. JUSTICE N.MALA**

**W.P.No.20049 of 2023
and W.M.P.Nos.19396 and 19397 of 2023**

The Wellington Gymkhana Club
Represented by its Secretary
No.VII/26, Wellington Barracks Post
Nilgris District – 643 231.

... Petitioner

Vs.

1.The Office of the Cantonment Board
Wellington Cantonment
Represented by the Defence Executive Officer
Ministry of Defence, Wellington
Tamil Nadu – 643 231.

2.The Defence Estate Officer
Defence Estates, Madras Circle
306, Annasalai, Teynampet
Chennai – 600 018.

3.The learned District Judge cum Chief Judicial Magistrate
Udhagamandalam.

...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India,
to call for the records of the 2nd respondent in its impugned order in
public notice vide undated, as per the order of the Court of estates officer



W.P.No.20049 of 2023

madras circle, Chennai vide order no.EO/M/98/02/MC dated 01.06.2023
and quash the same.

For Petitioner : Mr.Aravind Pandian, Senior Counsel
for Mr.M.Rajasekar
For Respondents : Mr.M.Vijayan for R1
Mr.Rajesh Vivekanandan
Dy. Solicitor General of India
for R2
For R3 - Court

ORDER

This Writ Petition is filed, challenging the order dated 01.06.2023 passed by the 2nd respondent under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

2. By consent of all counsels, the Main Writ Petition itself is taken for disposal.

3.The learned Senior Counsel appearing for the petitioner would submit that as per the impugned order, 15 days time was granted, from the date of receipt of that order, to vacate the premises. The said impugned order was received by the petitioner only on 19.06.2023. Therefore, according to the learned counsel for the petitioner, time for



W.P.No.20049 of 2023

eviction as per the impugned order started from 19.06.2023 and expired on 04.07.2023. While so, the respondents 1 and 2 hastily and without adhering to the provisions of law tried to vacate the petitioner from its legal possession of the property.

4. The learned counsel for the respondents 1 and 2 did not dispute that the order was passed on 01.06.2023 with a direction to evict within 15 days from the date of receipt of copy of the order. The respondent disputed the contention of the petitioner that he received a copy of the order only on 19.06.2023. According to the respondents the order was communicated to the petitioner vide e-mail dated 16.06.2023 and ex-parte possession was taken on 03.07.2023. The learned counsel further submitted that the petitioner's writ petition was not maintainable as the writ petitioner had availed the alternative statutory remedy by filing an appeal in C.M.A.No.5 of 2023 before the 3rd respondent herein, challenging the impugned order. The respondents counsel further submitted that the I.A.No.2 of 2023 filed for stay is listed for hearing on 06.07.2023.



W.P.No.20049 of 2023

WEB COPY

5. We have heard both the learned counsels and perused the materials placed before us.

6. It is seen that the impugned order was passed on 01.06.2023. According to the petitioner, as per postal endorsement he had received the same on 19.06.2023. Therefore time for eviction as per impugned order would fall on 04.07.2023. Even before the time given for eviction had lapsed, the respondents in a high handed manner sought to evict the petitioner and hence the petitioner was constrained to file the writ petition eventhough he had availed the alternate remedy under the statute. According to the learned counsel for the respondent, the possession was taken on 03.07.2023, which was well beyond the period of 15 days from the date of e-mail sent by the respondents. It is to be seen if notice through e-mail is valid notice.

7. It is to be noted here that Rule 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, provides for the Manner of service of notices and orders. The rule provides that, the service shall be made as follows:



W.P.No.20049 of 2023

“ Served by delivering, or tendering a copy of the notice or order, as the case may be, to the person for whom it is intended or to any adult member of his family, or by sending it by registered post acknowledgment due in a letter addressed to that person at his usual or last-known place of residence or business.

(2) Where the copy of [the notice or the order, as the case may be] under sub-rule (1) is delivered or tendered the signature of the person to whom the copy is so delivered or tendered should be obtained in token of acknowledgment of the service.”

From a reading of the rule, it is clear that e-mail notice is not permitted. In this context the oft quoted Judgment of the Privy Council in *Nazir Ahmad Vs. Emperor* is noteworthy. It is stated in the said Judgment as follows:

“The rule which applies is a different and not less well recognised rule, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”



W.P.No.20049 of 2023

WEB COPY

Therefore the contention of the respondent that possession was taken beyond 15 days from the date of service through e-mail cannot be accepted.

8. Therefore the contentions of the learned counsel for the petitioner that the respondents had high handedly dispossessed the petitioner by forcibly locking the main gate of the petitioner Club, barricading the main entrance and locking and sealing all entry points to the Club is justified. It is further pertinent to note that the respondents are very well aware that petitioner had filed an appeal in C.M.A.No.5 of 2023 against the impugned order and that he had also filed a stay application in the said appeal. The respondents have absolutely no answer to the question, as to why they could not wait till the application for stay was decided. More so, when admittedly the stay petition was listed for hearing on 06.07.2023.

9. In the light of the above said discussions and considering the fact that the petitioner has preferred an appeal before the 3rd respondent and the same is listed for hearing on 06.07.2023, the 3rd respondent is



W.P.No.20049 of 2023

directed to dispose of the I.A.No.2 of 2023 in C.M.A.No.5 of 2023 within a period of one week from 06.07.2023. As this Court finds that the ex-parte possession taken by the respondents is illegal, the respondents are directed to maintain Status quo ante, as on date of filing of the appeal in C.M.A.No.5 of 2023. Till then, the respondents 1 and 2 are directed not to take any further coercive steps.

10. With the above discussions this Writ Petition is disposed of.

No costs. Consequently connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
Speaking order/Non-speaking order
Neutral Citation : Yes / No
Jer/dsn

(J.N.B, J.) (N.M, J.)
05.07.2023



W.P.No.20049 of 2023

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To

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W.P.No.20049 of 2023

J. NISHA BANU, J.
and
N.MALA, J.

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05.07.2023